IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9316 of 2023

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Md Afsar Son of Md Yunus, Resident of Village- Karah, P.S- Silao, District- Nalanda ... Petitioner

Versus

1. The Chairman, Dakshin Bihar Gramin Bank Shri Vishnu Commercial Complex NH-30, New Bypass, Ashochak, Patna, Bihar 800016.
2. The Regional Manager, Dakshin Bihar Gramin Bank , Head office South of Meusium, Patna-1.
3. The Authorised Officer, Dakshin Bihar Gramin Bank Regional office Biharsharif, Nalanda.
4. The Branch Manager, Dakshin Bihar Gramin Bank, Rajgir, Nalanda.

... Respondents

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Appearance :
For the Petitioner : Mr.Sanjay Prasad, Adv.
For the Respondents : Mr.Ranjeet Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

4 11-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition is filed for the following relief(s) :

> *"…….. for issuance of a writ in the nature of mandamus or any appropriate writ's, order's direction commanding the respondents for consider grievance of the petitioner sympathetically to reduce interest amount against Rs 9,34,837.54 and to final settlement under OTS policy because due to COVID 19 and suffered in road accident of the petitioner and seriously ill of petitioner's wife business has been closed and the petitioner is unable to make payment of interest amount.*
>
> *For further direction the respondents to immediate stop action for auction of petitioner's residential house date 06-06-2023 because the petitioner is ready to deposit admissible loan amount under OTS scheme and to pass such order and direction in the interest of justice and ends of justice in the facts and circumstances of the case."*

3. Learned counsel for the petitioner has stated that the petitioner has taken a loan from the respondent-Bank and was prompt in paying the installments. However, during the Covid-19 pandemic the petitioner could not service the loan account properly as the petitioner has met with an accident and fractured his leg. Due to the accident the petitioner was not in a position to do business and make the repayment of loan. That the wife of the petitioner also fell sick and was under treatment. That the Bank officials issued a letter, dated 09.09.2022, directing the petitioner to deposit an amount of Rs.6,34,443/- against the outstanding loan amount. That after receipt of the said letter, the petitioner had made several representations to the Bank asking them to reduce the interest amount and grant installments to the petitioner. However, no action was taken on the representations made by the petitioner. Thereafter, the authorities have issued a sale notice in the Times of India and Prabhat Khabar newspapers for auctioning the property fixing the date of auction as 06.06.2023. Learned counsel has stated that the petitioner is a poor person and the Bank may be directed to give him an opportunity of clearing the outstanding loan amount under one time settlement scheme (OTS).

4. Per contra, the learned counsel appearing on behalf of the respondents has stated that the petitioner having taken the loan has failed to re-pay the loan amounts due to the Bank, therefore, [illegible] er alternative remedy the Bank had to declare th[illegible] petitioner as a Non-Performing Asset

(NPA). Learned counsel has stated that the petitioner has a remedy of approaching the Debt Recovery Tribunal, Patna, under Section 13(4) of the SARFAESI Act, 2002, (hereinafter referred to as, 'the Act') by filing an appropriate application.

5. Admittedly, in this particular case the auction notice, dated 06.06.2023, issued by the respondent-Bank has not fructified and the auction was cancelled. Thereafter, a second auction notice was issued on 17.07.2023 for conducting the auction on 21.08.2023, but, even the said auction could not be conducted.

6. This Hon'ble Court in C.W.J.C. No. 160 of 2023, dated 05.06.2023 has held as under :

> *Learned counsel for the Bank has rightly submitted that the petitioner has an alternative and equally efficacious remedy against action taken under Section 13(4) of the Act of 2002 by filing an appropriate application before the Debts Recovery Tribunal, Patna.*
>
> *In view of the alternative statutory remedy available to the petitioner, this Court is of the considered opinion that the writ application need not be entertained particularly keeping in view the judgments of the Hon'ble Supreme Court in the case of **Union Bank of India Vs. Satyawati Tondon** reported in **(2010) 8 SCC 110** and the recent judgment in the case of **M/s South Indian Bank Ltd. & Ors. Vs. Naveen Mathew Philip & Anr. Etc. Etc. [2023 Live Law (SC) 320]***

7. Having regard to the above submissions and also the facts that the petitioner has an alternative and efficacious remedy c the Debt Recovery Tribunal, Patna, under Sec Act, the petitioner is directed to avail

the said remedy under the Act before the Debt Recovery Tribunal, Patna.

8. However, it is made clear that this order does not preclude the petitioner from making a representation to the Bank officials for re-paying the outstanding due amounts in installments and for availing the one time settlement scheme (OTS), if any. If any such representation is made by the petitioner the same shall be considered by the authority concerned on its own merits.

9. With the above directions, the Writ Petition stands **disposed off**.

(A. Abhishek Reddy , J)

Shamshad/-

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