IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1250 of 2019

In

Civil Writ Jurisdiction Case No.17299 of 2017

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Dr. Mrs. Amita Verma, W/o Dr. Ashok Kumar, R/o Amrit Nursing Home, P.O. Rajkumar Ganj, P.S. L.N. Mithila University Campus Darbhanga , Distt. Darbhanga.

... ... Appellant/s

Versus

1. The Authorized Officer, Indian Bank, Patna Main Branch, Biscomaun Bhawan, West Gandhi Maidan, Patna.
2. Branch Manager, Indian Bank, Patna Main Branch, Biscomaun Bhawan, West Gandhi Maidan, Patna.
3. M/s Kamna Enterprises, Khasmahal Road No. 1, Chiraiyatand Road, Patna through its proprietor Shri Anand Shankar, S/o Late Hardeo Narayan Sinha, R/o Khasmahal Road No. 1, Chirraiyatand Road, Patna, presently residing at 403, Rama Braj Apartment near Alpana Market, Patliputra Colony, Patna.
4. Sri Hardeo Narayan Sinha (since deceased), S/o Late Amarchand Lal, through legal heirs, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
5. Smt. Kumkum Sahay, D/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
6. Shri Krishna Mohan Kumar Sinha, S/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
7. Smt. Rupa Sinha, D/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
8. Smt. Seema Sinha, D/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
9. Smt. Indrani Kumari, D/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.
10. Shri Anand Shankar, S/o Late Hardeo Narayan Sinha, R/o Village-Simra, P.S.-Sadar, Distt.-Darbhanga.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Arbind Kumar Jha, Advocate
For the Respondent/s	:	Mr.Dr. Binay Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-07-2023

Two writ petitions were disposed of by a common order. The appellant challenged the order passed in the writ petition filed by her. The bank, which was the petitioner in the other case, has not filed an appeal.

2. The authorized officer of the respondent Bank had initiated action against the borrower and taken over possession of the secured assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act'). The secured assets were also sold to the appellant herein. The firm, which was the borrower, being M/s. Kamna Enterprises, approached the Debt Recovery Tribunal, Patna under Section-17 of the Act of 2002. The application filed by the borrower was allowed. One of the grounds taken up before the High Court was of limitation and the lack of power on the Debt Recovery Tribunal (for brevity 'D.R.T.') to condone the delay. However, the learned counsel for the bank fairly submitted that the applicability of the Limitation Act, 1963 to the proceedings under Section-17 of the SARFAESI Act was found by this Court in ***Rahmatullah Vs. The Authorized Officer-cum-Chief Manager, Central Bank of India & Ors. in C.W.J.C. No.17999***

of 2017. The said ground was not pressed, but however, it was stated that there were a number of other grounds raised against the impugned order of the D.R.T. The learned Judge, who considered the matter, was of the opinion that since there was an appellate forum and the caution expressed in ***United Bank of India Vs. Satyawati Tondon & Ors.,*** reported in ***(2010) 8 SCC 110***, it was only appropriate that the parties be relegated to the appellate remedies. The ground, insofar as the borrower could not have maintained a securitization application in absence of the owner of the property, who had mortgaged the same, was found to be untenable, especially noticing the words 'Any person aggrieved' in Section-17(1) of the SARFAESI Act. The writ petitions were rejected, giving liberty to both the parties to approach the Debt Recovery Appellate Tribunal, Allahabad within a period of 30 days from the date of disposal of the writ petitions, upon which the question of any delay occasioned in filing the appeal was directed to be considered, keeping in view the fact of the pending writ petitions before the High Court.

3. We heard the learned counsel for the parties and it was the argument of the learned counsel for the appellant that without the junction of the owner of the property, who created the security interest, there could not have been an application

filed under Section-17 of the SARFAESI Act.

4. We cannot countenance the contention raised by the appellant and we agree with the learned Single Judge that any person aggrieved could take up the matter before the D.R.T. insofar as a proceeding under the SARFAESI Act. We also notice that the proprietor of the firm was the son of the guarantor who was no more. It is admitted by the appellant that the proprietor of the firm had an interest in the property after the death of his father. We say this only to put the matter in the correct perspective and it is not as if the borrower, who had mortgaged the property of another, could not have filed the application before the D.R.T. under Section-17(1). When the proceedings under the SARFAESI Act is taken, the borrower and the mortgagor are both parties interested in the proceedings. Merely because mortgagor has not been impleaded, it does not follow that the borrower cannot file an application under Section-17.

5. In the present case, we only add that the borrower, the son of the mortgagor, who died even before the security proceedings were initiated, had an interest in the property along with the other legal heirs of the deceased mortgagor. We find absolutely no reason to entertain the appeal.

6. We also notice the submission of the respondent bank that they have already approached the D.R.A.T., Allahabad with an appeal, as directed by the learned Single Judge.

7. The L.P.A. stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

K.C.Jha/-

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