IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.622 of 2022

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1. Fakira Prasad S/o Late Mogal Mahto, Resident of Village and P.O. - Manariya, P.S.- Sahiyara, District - Sitamarhi.
2. M/s. Jagdamba Enterprises (Stone Chips Crusher Small Scale Industry) located at Village - Hariharpur, P.O. - Sirauli, P.S.- Riga, District- Sitamarhi, through its Proprietor, Fakira Prasad Male, aged about 60 years, son of late Mogal Mahto, Resident of Village and P.O. - Manariya, P.S. - Sahiyara, District- Sitamarhi.

... ... Petitioners

Versus

1. The Canara Bank through the Chairman, Canara Bank of India H/o 112 JC Road, Bangaluru, Karnataka.
2. The Chairman, Canara Bank of India, H/o 112 JC Road, Bangaluru, Karnataka.
3. The General Manager, Canara Bank of India, Luv-Kush Tower, Exhibition Road, Patna -1.
4. The Deputy General Manager, Canara Bank of India, Luv- Kush Tower, Exhibition Road, Patna - 1.
5. The Divisional Manager, Canara Bank of India, Ashok Bazar Chowk, Muzaffarpur.
6. The Branch Manager, Canara Bank of India, National Market, Sitamarhi, Pin Code - 843302.
7. The Oriental Insurance Company Ltd. through the Branch Manager, Sitamarhi, Branch at Bypass Chowk, Dumra Sitamarhi Road, District- Sitamarhi, Pin Code - 843302.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shivpujan Sahay, Advocate
For the Respondent/s	:	Mr. Rajan Ghoshrave, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL ORDER

5 19-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 29.07.2022 passed by the learned Court of Sub Judge-1, Sitamarhi in Title Suit (Damage) No. 441 of 2021 whereby and

whereunder the learned Court below rejected the petition dated 27.05.2022 filed by plaintiffs / petitioners under Order 39 Rule 1, 2 and Section 151 of the Code of Civil Procedure (in short 'CPC').

3. Brief facts of the case are that the petitioners / plaintiffs have filed the Title Suit No. 441 / 2021 seeking damage against the respondent Canara Bank for loss suffered by plaintiffs / petitioners. Petitioner No. 1 is proprietor of petitioner No. 2, who are engaged in the business of stone crusher. The respondent Canara Bank granted loan to the petitioners who defaulted the payment of loan installments due to which their loan account was classified as N.P.A. The respondent Canara Bank initiated the proceeding to auction sale of the mortgaged property under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') for realization of loan. Then the petitioner filed the aforesaid suit in Civil Court. The petitioner filed injunction petition under Order 39 Rule 1 and 2 and Section 151 of CPC vide petition dated 27.05.2022 to restrain the respondents from taking further action against the petitioners under SARFAESI Act and from taking possession and auction sale of the

plaintiff's land mentioned in Schedule 1 of the suit. Learned Court below rejected the said interim injunction petition of the petitioners.

4. Learned counsel for the petitioners submits that the petitioner had taken loan from the respondent Bank under Rural Employment Generation Programme and the Canara Bank had got mortgage deed executed by plaintiff's father playing fraud. Further, it is submitted that the respondent Bank is contemplating to take forcible possession of the residential house and land of plaintiffs as well as to get it auction sold by taking recourse of the provision of SARFAESI Act, 2002 which is not applicable in this case. Further, he submits that the petitioners have got *prima facie* case and balance of convenience lies in favour of the plaintiffs and against respondents and plaintiffs / petitioners would suffer irreparable loss and injury which cannot be compensated in terms of money if the respondent bank be not restrained from taking possession of residential house and land belonging to plaintiffs / petitioners. He further submits that due to devastating flood huge loss and damages suffered by the plaintiffs / petitioners in carrying stone crushing business and the respondent bank had taken responsibility with regard to insurance and certain amount was

deducted from the account of petitioners, the whole liabilities goes to the respondent bank and is liable to pay entire damage caused to the petitioners.

5. Further, learned counsel for the petitioners submits that respondent bank has illegally and arbitrarily mortgaged the suit land and put the same in auction and is required to be restrained from doing so but the learned Court below failed to appreciate the same and dismissed the petition of the petitioner for interim injunction which is liable to be set aside.

6. On the other hand, learned counsel for appearing respondents submits that the loan account of the petitioners became irregular and was classified as N.P.A. on 01.07.2005 as per the guidelines of RBI and thereafter respondent Canara Bank initiated proceeding under SARFAESI Act, 2002 for payment of dues amounting to Rs. 9,52,910/-. The mortgaged property was put on auction and was auction sold in 2008.

7. The petitioner No. 2 through its proprietor (petitioner No. 1) approached the District Consumer Forum filed claim vide Case No. 01 / 2005 which was dismissed by District Consumer Forum, Sitamarhi and appeal filed on behalf of petitioner in State Consumer Commission, Patna vide Appeal No. 131 / 2009 which has also been dismissed. Thereafter, the

petitioners filed revision vide Revision Case No. 1297 / 2011 before National Consumer Redressal Commission, New Delhi which has also been dismissed. Then the petitioners filed SLP No. 12675 / 2021 in Hon'ble Supreme Court which was dismissed by the Hon'ble Apex Court.

8. The petitioner No. 2 earlier also approached this Court in CWJC No. 15543 / 2008 for restraining the Bank from taking further proceeding for realization of the loan amount which was dismissed on 22.12.2014 and it was observed that there is statutory alternative remedy available in terms of Section 17 of SARFAESI Act, before the Debts Recovery Tribunal.

9. Having heard the learned counsel for the petitioners and perused the record including the impugned order, it is clear that the suit property has already been sold in auction in 2008 under the SARFAESI Act, 2002. The petitioners choose not to approach Debts Recovery Tribunal despite the observation of this Court in order dated 22.12.2014 in CWJC No. 15543 / 2008. The learned trial Court has observed that Civil Court has no right to interfere in the proceedings initiated under SARFAESI Act, 2002 by Bank. There is no jurisdictional error or illegality in the impugned order and there is no valid reason

for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

10. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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