

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18005 of 2022

1. M/S Maruti Auto Mobile Shop No. 2, Rani Plaza, Exhibition Road, Patna, through its proprietor Mansoor Ansari Asharfi, aged about 58 years (male), son of Late Md. Kasim
2. Mansoor Ansari Ashrafi, son of Late Md. Kasim Resident of 504 Maqbool Apartment Exhibition Road, Patna-800001.
3. Sahzada Rafi Ahmad, son of Dr. Md. Yunus, Resident of 504 Maqbool Apartment Exhibition Road, Patna-800001.
4. Abid Ali, son of Late Ashim Ali, Resident of 504 Maqbool Apartment Exhibition Road, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Magistrate, Patna.
2. The Additional Collector-cum-Senior Officer, District Certificate Officer, Patna.
3. The Additional Collector, Law and Order, Patna.
4. The Sub-Divisional Magistrate, Patna Sadar, Patna.
5. The Block Agriculture Officer-cum-Magistrate, Patna Sadar, District-Patna.
6. The Canara Bank (erstwhile Syndicate Bank) Main Branch, Capital Tower, Block-B-Frazer Road, Patna, Bihar-800017.
7. Harsh Chopra son of Ashok Chopra, resident of Solar House, Ground Floor, Brindawan Kunj, Exhibition Road, Police Station-Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Pd. Singh, Advocate
		Mr. Binod Kumar Sinha, Advocate For the
Respondent(Bank)	:	Mr. Sidharth Harsh, Advocate
For the Respondent/s	:	Mr. Mithilesh Kumar Singh, A.C. to SC-15

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 27-02-2023 Heard Mr. Jitendra Pd. Singh assisted by Mr. Binod Kumar Sinha, learned Counsel appearing on behalf of the petitioner; Mr. Sidharth Harsh, learned Counsel appearing behalf of the Respondent (Bank) and Mr. Mithilesh Kumar Singh, learned A.C. to S.C-15 appearing



on behalf of the State.

2. The present writ petition has been filed for *inter alia* following relief(s):

A. For setting aside the order dated 18.07.2022 and 06.12.2022 passed by Dept Recovery Appellate Tribunal, Allahabad in Appeal (Diary) No. 347 of 2022 and Appeal No. 367 of 2022 preferred by Respondent 2nd Set whereby and whereunder the learned Appellate Tribunal while issuing notice to the Respondent (Writ petitioner) passed an interim order of status quo without condoning the delay in preferring the appeal.

B. For direction to the Respondent 1st Set to restore the possession of the writ petitioner over Shop No.2 and 2/A situated on ground floor Rani Plaza Exhibition Road, Patna and shop no. 21 Ground Floor Ashishek Plaza, Exhibition Road, Patna in compliance of the order dated 20.05.2022 passed in T.A. No. 01 of 2021 arising out of O.A. No. 34 of 2014 passed by Debt Recovery Tribunal, Ranchi, Jharkhand without further delay.

C. To set aside the order contained in Memo No. 2966 dated 05.12.2022 issued by the Sub-Divisional Magistrate, Patna Sadar whereby he has stayed the delivery of possession ignoring the direction issued by the Debt Recovery Tribunal as well as ignoring the fact that at the time of delivery of possession order status quo passed by the Appellate Tribunal was not existing.

D. For grant of any other relief or reliefs for which petitioner is entitled in the facts and circumstances of the case.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had availed cash credit facility of Rs. 21,00,000/- (Rupees Twenty One Lacs) but had failed to make payment of installment. His account was declared N.P.A. and was proceeded under Section 13(2) and Section 13(4) for possession was initiated against the



petitioner. The petitioner had challenged the order u/s 13(4) before this Court and a liberty was granted to the petitioner to challenge the same before the DRT.

4. Petitioner preferred an appeal before the DRT and the auction sale was set aside with a direction to make payment. Petitioner had cleared the outstanding dues in terms of the order dated 10.08.2016 passed in CWJC No. 24462 of 2013.

5. The respondent-Bank preferred T.A. No. 01 of 2021 arising out of O.A. No. 34 of 2014. The Tribunal without interfering with the order passed in O.A. No. 34 of 2014 directed the District Magistrate, Patna to restore the possession of the petitioner within 30 days. Aggrieved by the order, the bank preferred T.A. No. 01 of 2021 before the Appellate Tribunal, Allahabad. Learned Appellate Tribunal vide order dated 18.07.2022 directed to maintain status quo with respect to the property in question. As a result of which, Sub Divisional Magistrate cancelled the process of delivery of possession vide letter dated 15.12.2022 contained in Memo No. 2966.

6. In above circumstances, learned counsel



submitted that status quo was granted to bank vide order dated 18.07.2022 passed in Appeal No. 347 of 2022 which was heard along with Appeal No. 367 of 2022 but before that time the delivery of possession was made in favour of the petitioner on 05.12.2022 and without disclosing the said fact, the appellant-bank had obtained status quo with respect to the property in question. He further submitted that the Appellate Tribunal while passing interim order dated 18.07.2022 had issued notice to the petitioner on the one hand and on the other hand without giving opportunity to the petitioner has condoned the delay in preferring the appeal which has caused much prejudice to the petitioner. On these grounds, the petitioner seeks interference of this Court to set aside the interim order passed in Interlocutory Applications filed by the respondent-bank.

7. Learned counsel referring to the orders submitted that while disposing of I.A. No. 162 of 2022, I.A. No. 161 of 2022 and I.A. No. 160 of 2022 as well as order dated 21.09.2022 in Appeal (Diary) No. 347 of 2022 (Canara Bank v. M/s Maruti Auto Mobile and Ors.) learned DRAT has caused irreparable injury and loss to the



petitioner. He asserted that the order is without jurisdiction are fit to be set aside by this Court.

8. Learned counsel appearing on behalf of the respondent submitted that the respondent had filed O.A. No. 34 of 2014 for recovery of remaining dues after assessment of the sale proceed of the auction in account of the petitioner. The matter was subsequently transferred to DRT, Ranchi and the DRT, Ranchi, in terms of judgment dated 20.05.2022 observing compliance of order dated 10.08.2016 passed in CWJC No. 24462 of 2013, illegally directed the property to be handed over to the petitioner. The bank has challenged the said order of DRT, Ranchi before the DRAT, Allahabad in which interim order has been passed. The auction purchaser has also challenged the order of the DRT, Ranchi before the appellate tribunal.

9. In the aforesaid background, learned counsel submitted that the present writ petition is not maintainable as order of DRAT, Allahabad is in the interest of justice. The petitioners are free to raise their grievances before the DRAT, Allahabad.

10. At this stage, learned counsel appearing on



behalf of the petitioner submitted that this Court vide order dated 10.08.2016 passed in CWJC No. 24462 of 2013 had directed the petitioner to deposit the outstanding dues of loan against which order petitioner had preferred LPA. No. 2341 of 2016 and this Court vide order dated 09.05.2018, without interfering with the order had dismissed the appeal. The petitioner having no alternative had cleared the entire amount of loan and thereafter, the respondent-bank had preferred T.A. No. 1 of 2021 arising out of O.A. No. 34 of 2014 which was disposed of vide order dated 20.05.2022.

11. Learned counsel appearing on behalf of the respondent-bank has also questioned the order of the DRT by referring to paragraph no. 69 of the order dated 20.05.2022 that the DRT has passed *inter alia* following orders in support of his contention that the petitioner was required to clear all his outstanding dues within time as fixed by this Court in CWJC No. 24462 of 2013 and the order of the learned single judge was not interfered by the appellate court.

“Accordingly, this Tribunal deems fit and proper as is expedient in the interest of justice to direct the District Magistrate, Patna to comply with the direction of the Hon’ble High Court to



restore possession of three shops namely, shops namely Shop No.2 and 2A situated on ground floor, Rani Plaza Exhibition Road, Patna and shop No.21, Ground floor, Abhishek Plaza, Exhibition Road, Patna 800001 to the Defendants. The District Magistrate, Patna is hereby directed in obedience to the order passed by the Hon'ble High Court to get vacated the 3 shops namely Shop No. 2 and 2A situated on ground floor, Rani Plaza, Exhibition Road, Patna, P.S. Gandhi Maidan, Patna and the shop No. 21, Ground floor, Abhishek Plaza, Exhibition Road, Patna 800001, Police Station: Gandhi Maidan, District Patna 800001 which is still in possession of the auction purchaser and restore the possession thereof to the borrower (Defendants herein) within 30 days of the receipt of the order.

In view of the above findings, all the applications pending therewith are disposed of in light thereof. All the interim orders hereby stand vacated. No order as to cost. File be consigned to the record room."

12. Having heard the rival submissions of the parties, materials on record, it appears that the DRAT, Allahabad vide order dated 18.02.2022 has directed to maintain the status quo by all the concerned parties and dispose of I.A No. 162 of 2022, I.A No. 161 of 2022 and I.A No. 160 of 2022 in Appeal Dy. No. 347 of 2022. As pointed out by the petitioner, I.A No. 161 of 2022 which was filed for condonation of delay was not taken up. The office of the DRAT, Allahabad reported on 20.09.2022 that affidavit of service has not been filed and the said report further shows



that the application for condonation of delay being I.A No. 161 of 2022 is pending.

13. The petitioner had already appeared and has raised his objection that the respondent-Bank and the auction purchaser had not served memo of appeal to the petitioner. The Appellate Tribunal taking note of the said fact directed the respondent to serve the notice within 48 hours vide order dated 21.09.2022 and directed to list the case on 06.12.2022 for service.

14. Thereafter, the office again reported on 05.12.2022 that the DRAT took up the matter on 06.12.2022 and had passed *inter-alia* following orders:-

Learned counsel for the appellant files affidavit of service.

The office report dated 05.12.2022 shows that pursuant to the earlier order dated 21.09.2022, notices were sent to the respondents and as per tracking report, only respondent no.2 has been served, but notice sent to the respondent no.1 has returned back with endorsement "addressee left without instruction". The notice sent to the respondent no.3 has been kept on hold and notices sent to the respondent nos. 4 and 5 have returned back with endorsement "insufficient address".

Let the appellant take fresh steps without 10 days for service of notice upon the respondents by publication in the newspapers having wide circulation in the area. Affidavit of service along with proof of publication be filed by the next date.



*List this case on 15.03.2023 for service.
Till then the interim order, if any, shall remain
operative.*

15. Considering the aforesaid order dated 06.12.2022 it appears that the petitioner instead of filing his objection before the DRAT, Allahabad has hurriedly preferred the present writ petition. Further, it appears to this Court that vide order dated 18.07.2022, the DRAT, Allahabad had directed all the parties to maintain status quo till the next date in which I.A. No. 161 of 2022 was also considered. The petitioner is aggrieved by the said order. Considering the fact that the office has pointed out that application for condonation of delay being I.A No. 161 of 2022 is pending consideration this Court finds finds that the learned DRAT, Allahabad, at the same time, had fixed the next date of hearing on 15.03.2023. It cannot said to be proper either in the interest of justice that all the parties are required to be heard before passing any order which affecting adversely any of the parties.

16. In the facts and circumstances of the case learned DRAT, Allahabad, is directed to pass a reasoned order after providing due opportunity of hearing to the



petitioner and all such aggrieved parties on 15.03.2023, the date fixed by the Tribunal.

17. Accordingly, the order dated 18.07.2022 is modified to the above extent.

18. The present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

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