

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25172 of 2019

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Pankaj Kumar Jaiswal Son of Satyanarayan Jaiswal, Resident of B/4, Fourth Floor, Shivkunj Apartment, Exhibition Road, P.S. Gandhi Maidan, District-Patna through its Power of Attorney holder Sri Satyanarayn Prasad Jaiswal, Son of late Shital Prasad Jaiswal.

... .. Petitioner/s

Versus

1. The Union of India through Recovery Officer, Debts Recovery Tribunal for the State of Bihar, Karpuri Thakur Sadan, Aashiana Digha Road, Patna-800025.
2. ICICI Bank Limited, Landmark Building (4th Floor) 228A, AJC Bose Road, Kolkata- 700020 through its General Manager.
3. The Authorised Officer, ICICI Bank Ltd. Zonal Office, Plot No. 6B, S.K. Puri, Sahdeo Mahto Marg, Boring Road, Patna- 870001
4. Shiv Lok Dubey, Son of late Janeshwar Dubey, Resident of Flat No. 403/B, Prasad Apartment, Near Kali Mandir, Kali Mandir Road, P.S. Patrakar Nagar, Patna.
5. Kiran Dubey, Wife of Shiv Lok Dubey, Resident of Flat No. 403/B, Prasad Apartment, Near Kali Mandir, Kali Mandir Road, P.S. Patrakar Nagar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mrs. Kanak Verma, CGC

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

(Per: HONOURABLE THE CHIEF JUSTICE)

2 04-01-2023 Petitioner has prayed for the following relief(s):-

“(i) For issuance of appropriate writ / writs, order/ orders, direction/ directions for quashing of order dated 27.08.2019 passed in R.P. Case No. 85 of 2017 by respondent Debts Recovery Tribunal by holding that first charge on mortgaged property i.e. the flat no. B-4, Shiv Kunj Apartment, Exhibition Road,



Patna prevail on certificate holder i.e. respondent no. 4 and hence objection filed by petitioner on 26.07.2018 was disposed of and fixed the date for sale proclamation.

(ii) For issuance of appropriate writ/writs, order/orders, direction/ directions for quashing the judgment dated 15.06.2016 passed in S.A. No. 24 of 2016 by the Presiding Officer, Debt Recovery Tribunal for the State of Bihar whereby and whereunder learned Tribunal dismissed the application filed by petitioner that in granting cash credit facility to respondent no. 4, respondent bank i.e. respondent no. 2 has not followed the rules, laid down procedures and also not followed the rules while taking possession of the property, publication of the notice and serving the notice on respondent no. 4 and 5 and as such invoking of the SARFAESI Act with respect to flat in question is not sustainable.

(iii) For issuance of appropriate writ/writs, order/orders, direction/ directions. commanding the respondent bank authority not to disturb the possession of petitioner on Flat No. B-4 situated at Shiv Kunj Apartment, Exhibition Road, Patna which was purchased by the petitioner on payment of valuable consideration amount to respondent no. 4, accordingly sale deed no. 1021, Book No. 01, Volume No. 22, Page No. 199 to 214 with respect to area 924 sq. feet. and said Deed is preserved in CD No. 04 of 2013 in total 16 pages dated 09.01.2013 and petitioner is in possession since then on the date of attachment of property i.e., Respondent No. 4 does not have any right, title and possession with



respect to the mortgaged property and respondent bank will have to take recourse to release the loan from the guarantor who is non-else but the wife of respondent no. 4.

(iv) For issuance of any other relief/ reliefs for which petitioner is found entitled in the eye of law and in the facts and circumstances of the present case.”

It is not in dispute that proceedings, subject matter of the writ petition, are now also pending before the Debt Recovery Tribunal, Patna, constituted under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

As such, learned counsel for the petitioner seeks permission to withdraw the present petition reserving liberty to pursue the matter before another forum, including the issue, subject matter of the present petition.

Liberty as prayed for is granted.

Learned counsel for the State states that if such steps are taken within a period of four weeks, the issue of limitation shall not be allowed come in the way and the matter shall be heard and decided on merits expeditiously in accordance with law.

Statement accepted and taken on record.



We only hope and expect that the proceedings before the Debt Recovery Tribunal, Patna would be completed expeditiously, within a period of four weeks thereafter.

All issues raised in the present petition, including that of (a) collusion; under valuation and *mala fides*, are left open to be adjudicated by the competent authority.

The instant petition stands disposed of as withdrawn in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Sujit/Ashwini

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