

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5608 of 2021**

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Nand Kumar Ray son of Ram Niwas Ray resident of Village and P.O.- Gundi,  
Police Station- Krishnagarh, District- Bhojpur.

... .. Petitioner/s

Versus

1. Canara Bank through its Regional Manager, Regional Office, Canara Bank, Maurya Lok, Patna.
2. The Authorised Officer, Canara Bank, Circle Office (Recovery Department), Lav Kush Tower, Exhibition Road, Patna- 1.
3. The Branch Manager, Canara Bank, Ara Branch, Jail Road, Ara, District- Bhojpur.
4. Aditya Prasad, son of Krishnaji Gupta, resident of Abarpul, Quazi Tola, Arrah, Bhojpur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Jitendra Prasad Singh  
For the Respondent/s : Mr. Siddharth Harsh

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

13    15-05-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

*“That this is an application for issuance of an appropriate writ/writs setting aside the possession notice dated 26.11.2020 issued by the respondent Bank in exercising the power under the Securitization and Reconstruction of Financial Assets and Enforcement and Security Interest, Act, 2002 (SARFAESI Act) and rules framed thereunder whereunder notice is given to the petitioner and the public in general that the undersigned has taken possession of the property described in the notice and further respondents may be directed to settle the dispute on the basis of offer made by the petitioner for payment of loan amount and in order to show bonafide gesture, he deposited Rs. 10,05,000/- and or to grant any other relief or reliefs for which petitioner is legally entitled in the facts and circumstances of the case.”*



3. Having regard to the judgment of the Hon'ble Supreme Court as reported in **(2024) 2 SCC 1 (CELIRLLP V. BAFNA MOTORS (MUMBAI) PVT LTD & ORS)** wherein the Hon'ble Supreme Court has held as under;

*"110.1 The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.*

*110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.*

*110.3. In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction- purchaser.*

*110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules, and entered into a private arrangement with a borrower.*

*110.5 The High Court under Article 226 of the Constitution could not have applied equitable consideration*



*to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.”*

4. This Court is not inclined to entertain the present writ petition. The present CWJC is disposed of leaving it open to the petitioner to challenge the sale notice or any other order before the appropriate forum available under the SARFAESI Act, 2002.

4. With the above direction, the present writ petition stands disposed of.

**(A. Abhishek Reddy, J)**

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