IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19484 of 2016

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1. Smt. Bandana Devi and Ors W/o Sri Chandraditya Kumar R/o Village-Dronpur, P.S. Ahiyapur, Distt.-Muzaffarpur
2. Chandraditya Kumar S/o Sri Braj Kishore Singh R/o Village-Dronpur, P.S. Ahiyapur, Distt.-Muzaffarpur
3. Aditya Kumar S/o Sri Braj Kishore Singh R/o Village-Dronpur, P.S. Ahiyapur, Distt.-Muzaffarpur
4. Braj Kishore Singh @ Baj Kishor Singh S/o Ramyash Singh R/o Village-Dronpur, P.S. Ahiyapur, Distt.-Muzaffarpur

... ... Petitioner/s

Versus

1. The Uttar Bihar Kshetriya Gramin Bank, through the Chairman, Uttar Bihar Kshetriya Gramin Bank, Head Office at Kalambagh Chouk, PS-Kazimohammadpur, Distt-Muzaffarpur.
2. The Chairman, Uttar Bihar Kshetriya Gramin Bank, Head Office, at Kalambag Chowk, P.S. Kazimohammadpur, Distt-Muzaffarpur
3. The Branch Manager, Uttar Bihar Kshetriya Gramin Bank, Branch Jhapaha, P.S. Ahiyapur, Distt-Muzaffarpur
4. The Authorized Officer, Uttar Bihar Kshetriya Gramin Bank, Regional Office, Muzaffarpur East

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jai Prakash Verma
For the Respondent/s	:	Mr.Prabhakar Jha
	:	Mr.Amitesh Jha

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 12-11-2024

1. This Writ petition is filed for quashing the notice dated 25.10.2016 issued under the signature of Authorized Officer, Uttar Bihar Kshetriya Gramin Bank (Respondent No. 4) under Section 13(4) of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) whereby and whereunder the possession notice over the plots of the petitioners was published in daily newspaper “Dainik Jagran” Muzaffarpur with respect to land pertaining to Mauza-Jhapaha Dronpur, Village-Dronpur, PS No. 594, Khata No. 1624, Khesara No. 5924, Area 0.23 decimal, Khesara No. 6271, Area 0.17 decimal, Khesara No. 5975, Area 0.02 decimal, Khesara No. 7436, Area 0.17 decimal and Khesara No. 6948, Area 0.29 decimal, North-Road and in South-Kailash Singh and in respect to land bearing Thana No. 594 appertaining to Mauza-Jhapha, Khata No. 1624, Khesara No. 7254, Area 0.91 decimal and in boundary North-Kailash Singh, South-Road, East-Road and in West-Kailash Singh, informing the general public that the said land have been taken in possession by the Bank and thus, they were informed not to make any type of transaction with respect to the said properties. Further, to direct the respondents to consider the representation of the petitioner no. 2, his father namely, Braj Kishore Singh (petitioner no. 4) and his brother namely, Aditya Kumar (petitioner no. 3) pursuant to the notice dated 20.10.2016 issued under Section 13(2) of the SARFAESI Act, 2002 by the respondent No. 4.

2. The brief facts culled out of the petition are that petitioner No. 2 is the borrower of the loan for Rs. 16,42,000/- (Rupees Sixteen lacs forty two thousand only) in which the petitioner Nos. 3 and 4 stood as Guarantors. Against the cash credit loan of Rs. 6,00,000/- (Rupees Six lacs) taken by the petitioner No. 1, petitioner Nos. 2 and 3 are Guarantors. Petitioner No. 2 has availed agricultural loan of Rs. 16,42,000/- from the respondent /Bank for the purpose of construction of godown in rural area on the terms and conditions of the agreement made between the parties. In addition to that, petitioner No. 1 has taken cash credit of Rs. 6,00,000/- and mortgaged his property as specified in the prayer portion. After construction of the godown, the petitioner No. 2 has handed over the same to the respondent/Bank, for providing the same to the company as FCI on rent, so that he could repay the loan

from the rent amount, but the respondent/Bank did not took any initiation and due to carelessness of the respondent/Bank, the said godown remained vacant, which caused heavy financial loss to the petitioner Nos. 1 and 2. Petitioner Nos. 1 and 2 filed a complaint case No. 145 of 2016 dated 08.06.2016 before the District Consumer Forum, Muzaffarpur against the respondent/Bank seeking for compensation of Rs. 10,00,000/- and for amount of subsidy of Rs. 6,25,000/- along with Rs. 1,00,000/- for mental and physical loss as well as for cost of Rs. 10,000/-. Petitioner Nos. 1 and 2 also filed a petition dated 22.06.2016 under Section 13(3B) of the Consumer Protection Act, 1986 with a prayer, that till the disposal of the complaint case the Bank shall not take any punitive action against the complainant.

3. It is the specific contention of the petitioners that pursuant to the notice issued by the District Consumer Forum, the respondent/Bank issued notice to the petitioners under SARFAESI Act, for repayment of loan amount and the petitioners were pressurized to repay the

loan amount. Thereafter, the respondent/Bank again issued notice dated 20.10.2016 to petitioner Nos. 2 to 4 under Section 13(2) of the SARFAESI Act for repayment of loan amount of Rs. 28,79,298.80 availed by petitioner No. 2. The petitioner Nos. 2 to 4 filed a detailed representation to the Bank on 25.10.2016 bringing to the notice of the Bank the circumstances of the non-payment of the loan and that no action shall be taken against them till the disposal of the case before the District Consumer Forum. Thereafter, respondent No. 4 issued possession notice in daily newspaper “Dainik Jagran”, Muzaffarpur dated 25.10.2016 and under Section 13(4) of the SARFAESI Act, 2002 intimating to the general public that the possession was taken over by the Bank with respect to the property of the petitioners.

4. It is urged by the Learned counsel for the petitioners that as per the judgments of the Apex Court, if any objection has been filed before the Bank, the Bank has to pass a reasonable order mentioning the reasons for non-acceptance of the objection and to intimate the order to the

petitioner within a week. It is further contended that pending the representation of the petitioner, the Bank has proceeded for issuance of possession notice under Section 13(4) and section 13(2) of the SARFAESI Act which is illegal and arbitrary. Therefore, prayed to quash the notice of the Bank dated 25.10.2016 which was issued to the petitioner No. 1 under Section 13(4) and 13(2) of the SARFAESI Act.

5. It is further contended by the Learned counsel for the petitioners that in case of **Rajesh Kumar vs. State of Bihar** in **CWJC No. 11378 of 2014**, this Court vide order dated 25.07.2014 allowed the Writ application contending that the mandatory provisions regarding service of notice under Section 13(2) of the SARFAESI Act is to be followed by the Bank. Therefore, prayed to allow the Writ application.

6. On the other hand, the Learned counsel for the Bank contended that the loan account of the petitioner No. 2 was closed on 29.06.2021 and that petitioner No. 1 has not made any payment till date. The present notice which

is under challenge pertains to petitioner No. 2 and therefore, nothing remains in the Writ application, for adjudication.

7. It is pertinent to mention that the Hon'ble Apex Court in **Celir LLP Vs. Bafna Motors (Mumbai) (P) Ltd. and Others,** reported in **2024(2) SCC 1 Para 97, 98, 110** have held as under:-

97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in *Satyawati Tondon* [*United Bank of India* v. *Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

"*43*. Unfortunately, the High Court [*Satyawati Tondon* v. *State of U.P.*, 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

98. In *CIT* v. *Chhabil Dass Agarwal* [*CIT* v. *Chhabil Dass Agarwal*, (2014) 1 SCC 603] , this Court in para 15 made the following observations : (SCC p. 611, para 15)

"*15*. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case* [*Thansingh Nathmal* v. *Supdt. of Taxes*, 1964 SCC OnLine SC 13] , *Titaghur Paper Mills case* [*Titaghur Paper Mills Co. Ltd.* v. *State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

110. We summarise our final conclusion 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 considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act.

110.6. The two decisions of the Telangana High Court in *Concern Readymix* [*Concern Readymix* v. *Corporation Bank*, 2018 SCC OnLine Hyd 783 : (2019) 3 ALD 384] and *Amme Srisailam* [*Amme Srisailam* v. *Union Bank of India*, 2022 SCC OnLine AP 3484] do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in *Pal Alloys* [*Pal Alloys & Metal India (P) Ltd.* v. *Allahabad Bank*, 2021 SCC OnLine P&H 2733] also does not lay down the correction position of law.

110.7. The decision of the Andhra Pradesh High Court in *Sri Sai Annadhatha Polymers* [*Sri Sai Annadhatha Polymers* v. *Canara Bank*, 2018 SCC OnLine Hyd 178] and the decision of the Telangana High Court in *K.V.V. Prasad Rao Gupta* [*K.V.V. Prasad Rao Gupta* v. *SBI*, 2021 SCC OnLine TS 328] lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.

8. This case is squarely covered by the aforementioned judgment. Admittedly, the loan account of the petitioner No. 2 has been closed and the petitioner no. 1 has not made any repayment. If at all the petitioner is

aggrieved by the act of the Bank, he shall pursue his remedies before the Debt Recovery Tribunal as he has an effective alternative remedy. However, the Hon'ble Apex Court have reminded that High Courts should not entertain application under Article 226 of the Constitution, if there is an effective remedy available to the aggrieved persons under the provisions of the SARFAESI Act.

9. Admittedly, the petitioners availed loan from the respondent/Bank. As per the contents of the Writ petition it can be construed that the petitioners have not repaid the loan amount and in turn they have directed the Bank to let out the property on rent on which godowns were constructed. There is no document before the Court to show that after construction of the godown, the property was handed over to the Bank. The Bank has issued notice under Section 13(2) of the Act intimating to the general public that they have taken the possession over the land. This Court is of the considerable opinion that the petitioners have an effective alternative remedy and therefore, the Writ petition itself is not maintainable.

However, the petitioners are at liberty to pursue their remedies.

In result, Writ petition is dismissed as devoid of merits.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	