IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2891 of 2024

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Surendra Kumar @ Surendra Yadav Son of Mushafir Yadav @ Musafir Yadav, resident of village - Hariharpur, P.S. - Bodhgaya, District - Gaya.

... ... Petitioner/s

Versus

1. The Bank of India through its Chairman, Star House, C-5, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051.
2. The Authorized Officer cum Chief Manager, Bank of India, Gaya Branch, Manjhia Kothi, Vishnu Apartment, Chandrashekhar College, Rangbahadur Road, Gaya.
3. The Branch Manager, Bank of India, Gaya Branch, Harihar Market, G.B. Road, P.S. - Kotwali, District - Gaya.
4. M/s Royal Manufacturing and Techno Pvt. Ltd. through its Directors, Registered Office at MIG- 91, Shakuntalam, A.P. Colony, Gaya.
5. Abhijit Kumar, Director of M/s Royal Manufacturing and Techno Pvt. Ltd., Son of Sri Girish Nandan Singh, resident of Nadraganj, Koeri Bari, Khajanchi Road, P.S. - Civil Lines, District - Gaya.
6. Ravi Chauhan, Director of M/s Royal Manufacturing and Techno Pvt. Ltd. Son of Prof (Retd) Kamleshwar Prasad Singh, resident of Asha Kila, Near Housing Board, P.S.- Body Gaya, Gaya.
7. Prabhakar Kumar, Director of M/s Royal Manufacturing and Techno Pvt. Ltd. Son of Sri Rana Pratap Singh, resident of Durga Asthan, Koeri Bari, P.S. - Civil Lines, District- Gaya.
8. Musafir Yadav @ Mushafir Yadav, Son of Late Panchu Yadav, resident of Village - Hariharpur, P.S. - Bodhgaya, District - Gaya.
9. Dharmendra Kumar, Son of Musafir Yadav @ Mushafir Yadav, resident of Village - Hariharpur, P.S. - Bodhgaya, District - Gaya.
10. Ravindra Kumar, Son of Musafir Yadav @ Mushafir Yadav, resident of Village - Hariharpur, P.S. - Bodhgaya, District - Gaya.
11. Smt. Kiran Kumari, Wife of Sri Rajbali Yadav, resident of Raja Kothi, P.S. - Delha, District - Gaya.
12. Smt. Rita Kumari, Wife of Raju Yadav, resident of Mohalla - Fatehganj, P.S. - Kotwali, District - Gaya.
13. Smt. Sweta Kumari, Wife of Sri Sunil Kumar, resident of Mohalla - Kharkhura, P.S. - Delha, District- Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s :	Ms. Nivedita Nirvikar, Sr. Adv. Mr.Avinash Singh, Adv.
For the Respondent/Bank:	Dr. Binod Bihari Sinha, Adv. Mr. Amarjeet Chaudhary, Adv. Mr.Ajit Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 22-02-2024 1. The petitioner being aggrieved by the auction notice dated 25.01.2024 issued by the Authorized Officer, Gaya Branch of Bank of India whereby the mortgaged property contained in Khata No. 403 (old), 371 & 447 (new); Plot No. 218 & 216 (new), Thana No. 355 admeasuring total 31 decimal situated at village- Amwan, P.S.- Bodhgaya, District- Gaya has been put on e-auction schedule to be held on 26.02.2024, has filed the present writ application.

2. M/s Royal Manufacturing & Techno Pvt. Ltd., a Company registered under the Company Act established its unit for manufacturing plastic moulded glass. A cash credit loan was sanctioned in favour of the Company granting CC facility of Rs. 71 lakh and Rs. 25 lakh in the year 2013. The father of the petitioner secured the loan by mortgaging the property in question through mortgaged deed.

3. M/s Nivedita Nirvikar, learned senior counsel for the petitioner submits that the petitioner or his father are not one of the promoters or Directors of the Company and earlier the Company had a rent agreement with the father of the petitioner. However, in the year 2016 a fresh loan by way of CC was taken by the Company amounting to Rs. 81 lakh which has been

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guaranteed / secured by the father of the petitioner through mortgage. Entire loan has been declared N.P.A. by the Bank including the loan taken by the Company earlier in the year 2013 to the tune of Rs. 71 lakh and Rs. 25 lakh. Learned counsel further submits that a possession notice was pasted on the mortgaged property under Section 13(4) of the SARFAESI Act dated 11.10.2018 which led to the filing of SARFAESI Appeal by the petitioner before the D.R.T., Patna bearing SA No. 14 of 2019. The SARFAESI Appeal is still pending before the D.R.T., Patna. Petitioner and his father is ready to negotiate with the Bank for payment of loan amount incurred upon Rs. 81 lakh as per the OTS scheme or any scheme which may be available in the Bank.

4. On the other hand, learned counsel for the Bank of India submits that petitioner's father has given security for entire loan amount and has mortgaged the subject land in favour of the Bank against the entire loan. He further submits that father has not come forward against the possession notice and instead petitioner, being the son, has filed SA No. 14 / 2019 before the D.R.T., Patna raising the question of family property and partition between the father which is not acceptable to the Bank. The Bank is proceeding on the basis of SARFAESI Act and

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admittedly the land has been mortgaged as a security against the loan and the Bank is proceeding in accordance with the provisions of the SARFAESI Act.

5. I have heard learned counsel for the parties. It is an admitted position that the petitioner is neither a borrower nor a guarantor. The father of the petitioner had given a guarantee and secured the loan taken by the M/s Royal Manufacturing & Techno Pvt. Ltd. Company and has also mortgaged the subject property in favour of the Bank. The SARFAESI Appeal filed by the petitioner is pending since 2019.

6. In view of the admitted position that SARFAESI Appeal is pending, the petitioner cannot seek parallel remedy before this Court by way of writ application. Whatever offer the petitioner is making before this Court or is contemplating to offer to the Bank, all such issues can be raised by the petitioner before D.R.T., Patna in SARFAESI Appeal No. 14 of 2019.

7. Since e- auction is going to be held on 26.02.2024 therefore this Court feels it expedient to direct the Bank to stay the e-auction for a period of two weeks to enable the petitioner to approach D.R.T., Patna in SA No. 14 of 2019.

8. It is made clear that final two weeks time is given to the

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petitioner to seek appropriate remedy against e-auction notice before D.R.T., Patna.

9. If no positive order is passed by D.R.T., Patna within two weeks, the Bank shall be at liberty to proceed with the auction.

10. With the aforesaid observation and direction this application is disposed.

(Anil Kumar Sinha, J)

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