# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No. 3922 of 2024**

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M/s Mahaveer Automobiles (Partnership Firm), Registered Office at NH-31, Near Ford Company Chowk, District- Purnea- 854301, Represented through its partner Dashrath Kamti Suman, Male, Aged about 62 years, (Partner M/S Mahaveer Automobiles), S/o Mahaveer Kamti, R/o Prabhat Colony, Near Mount Carmel School, District- Purnea, Bihar- 854301.

... ... Petitioner/s

Versus

1. State Bank of India, through the Authorised Officer-cum-Assistant General Manager, Stressed Assets Recovery Branch, 2nd Floor, Patna Main Branch Building, Gandhi Maidan (West), Patna- 800001.
2. The Chief Manager, State Bank of India, RACC Purnea Branch (62813), Kala Bhawan Road, Purnea- 854301.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Vikas Kumar Jha, Adv. |
| For SBI | : | Mr. Anant Kumar Sharan, Adv. |
| | : | Mr. Prabhat Kumar Sharan, Adv. |
| | : | Mr. Hemant Kumar Sharan, Adv. |
| For the Respondent/s | : | Mr. Binod Bihari Sinha, Adv. |

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

ORAL ORDER

6 04-10-2024 The Hon'ble Supreme Court passed in ***Celir LLP v. Bafna Motors(Mumbai) (P) Ltd. (2024) 2 SCC 1*** has held as under;

> *"105. We summarise our final conclusion as under:*
>
> *(i) 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.*
>
> *(ii) The confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.*
>
> *(iii) 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 Rules of 2002. 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 Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.*

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

*(v) 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.*

*(vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law.*

*(vii) The decision of the Andhra*

*Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.*

*106. In the result, both the appeal succeed and are hereby allowed.*

*107. The impugned judgment and order passed by the High Court is hereby set aside.*

*108. The respondent Bank shall refund the entire amount deposited by the borrowers i.e., an amount of Rs.129 crore paid by them in lieu of the redemption of mortgage of the secured asset at the earliest. The appellant herein shall pay an additional amount of Rs. 23.95 crore to the Bank within a period of one week from today and subject to such deposit, the Bank shall issue the sale certificate in accordance with Rule 9(6) of the Rules of 2002."*

*109. The pending applications if any shall stand disposed of."*

**2.** This Court is not inclined to entertain the present writ petition. The present writ petition is disposed of granting liberty to the petitioner to approach the Debt Recovery Tribunal, Patna for redressal of his grievance, if any.

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

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

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