IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1146 of 2016

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1.1. Savita Devi W/o Late Shiv Kumar Singh, R/o Village - Sahwajpur, P.O.- Bhikhanpur, P.S. Ahiyapur, District - Muzaffarpur.

1.2. Satyendra Kumar son of Late Shiv Kumar Singh, R/o Village - Sahwajpur, P.O. - Bhikhanpur, P.S. Ahiyapur, District - Muzaffarpur.

1.3. Jitendra Kumar Singh, son of Late Shiv Kumar Singh, R/o Village- Sahwajpur, P.O. - Bhikhanpur, P.S. Ahiyapur, District - Muzaffarpur.

... ... Petitioners

Versus

1. The Central Bank of India.
2. The Regional Manager, Central Bank of India, Regional Office, Muzaffarpur.
3. The Branch Manager, Central Bank of India, Maripur Branch, Muzaffarpur.
4. The State of Bihar.
5. That District Magistrate, Muzaffarpur.
6. The Sub-Divisional Magistrate, East Muzaffarpur, Muzaffarpur.
7. The Executive Magistrate cum Incharge Magistrate, East Muzaffarpur, Muzaffarpur.
8. Mr. Aditya Kumar S/o Sri Braj Kishore Singh, R/O Vill-Daunpur, P.O. Jhapana, P.S. Ahiyapur, Distt-Muzaffarpur.

... ... Respondents

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Appearance :

For the Petitioners	:	Mr. Prem Ranjan Raj, Advocate
	:	Mr. Rakesh Kumar, Advocate
For the Respondents	:	Mr. S.K. Mandal, SC24
For the Respondent (Bank)	:	Mr. Ajay Kumar Sinha, Sr. Advocate
	:	Mr. Ajit Kumar Sinha, Advocate
	:	Ms. Dilkash Khan, Advocate
	:	Mr. Praveen Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 16-07-2024

1. This Writ petition is filed to direct the respondent-Bank to accept the principal amount of loan and thereafter, to provide the Statement of Account for the Housing Loan Account No. 11262 and Personal Loan Account of the original

petitioner (deceased) showing rate and amount of interest charged therein. Further, seeking for a direction to settle rest of the loan amount as one time measure and to quash the consequential order dated 22.10.2013, passed by respondent No. 5 *vide* order dated 09.12.2015 Memo No. 2597 (Annexures 7 & 8) and as an ad-interim measure after depositing the principal amount, the physical possession of the mortgage property (Annexure 7 & 8) be stayed till disposal of the case.

2. The brief facts of the petition are that the petitioner has availed a Housing Loan of Rs. 2,50,000/- (Rs. Two Lakh Fifty Thousand) having Account No. 11262 and a Personal Loan of Rs. 40,000/- (Rs. Forty Thousand) in the year 2004 from Central Bank of India, Maripur Branch, Muzaffarpur for construction of house. The petitioner had been advanced the loan, but Bank had not given any agreement paper or loan paper to the petitioner, except Passbook of Housing Loan and were also not intimated about the revealing rate of interest against the Personal Loan. The petitioner constructed the House over the said land, which stands in the name of Savita Devi, wife of the petitioner, and

mortgaged the said land to the Bank at the time of availing the loan. During 2004, the petitioner had a small shop by which he was maintaining his family and subsequently, due to misfortune, he was forced to close the shop. Later, could not repay the loan amount and his loan account became NPA on 30.09.2011. Consequently, the Bank raised demand notice of Rs. 5,75,708/- on 24.11.2011 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI Act' in short) (Annexure 2).

3. As per the SARFAESI Act, the amount demanded under the notice is required to be paid within 60 days.The petitioner approached the branch and offered to pay Rs. 2 Lakhs, which was not accepted by the Bank.

4. The petitioner raised objection on 10.01.2012, as provided under the SARFAESI Act, and requested to provide the Statement of Account along with the rate of interest and also sought for permission to deposit part of the loan amount (Annexure-3). The Bank has not replied/disposed the objection/representation of the petitioner, which is mandatory as per the rule and further proceeded under Section 13(4) of

the SARFAESI Act. The possession notice has been issued to the petitioner on 23.02.2012 under Rule 8(i), which was never been served on the petitioner.

5. It is the contention of the Learned counsel for the petitioners that the notice is supposed to be published in two Newspapers, but the Bank has not complied with the mandatory rule of SARFAESI Act. The petitioner has challenged the said possession notice before Debt Recovery Tribunal (DRT) on 18.09.2012, when he came to know that the tender has been invited in sealed envelopes for the Sale of the property, as per the publication in Newspaper on 25.03.2012. It is also urged by the Learned counsel for the petitioners that the petitioner has neither been given notice nor the physical possession has been taken by the Bank, which is mandatory under the SARFAESI Act. Further, the value of the mortgaged property is about 25 Lakhs and that the respondent-Bank estimated the cost of Rs. 5.76 Lakhs, which is highly prejudicial to the interest of the petitioner.

6. The case bearing Appeal (SARFAESI) No. 171/2012 was disposed of on 31.10.2012, directing the petitioner to file a representation before the respondent-Bank

and the respondent-Bank shall dispose of the representation within two weeks thereafter. The order dated 31.10.2012 was not available to the to the petitioner and he could obtained the same in the month of December, 2015. It is the specific contention of the Learned counsel that the certified copy could be available only after 20th of January, 2016 and as such the petitioner was unable to annex the copy of the said order.

7. It is also the contention of the Learned counsel for the petitioner that he had filed representation on 05.11.2012 and the said representation was pending before the respondent-Bank, and after the lapse of one year, on 26.07.2013, a demand notice was sent to the wife of the petitioner under wrong Account Number, asking to pay Rs. 3,42,107/- along with interest, and when the petitioner approached the Bank, they demanded to pay about Rs. 6 Lakhs, without providing any Statement of Account. Later, the petitioner got notice from National Lok Adalat, Muzaffarpur at the instance of the respondent-Bank (for Rs. 1,61,362/-), with a direction to appear before the Bank on 07.02.2015 and to settle the case filed by the Bank. When the petitioner appeared before the Bank on 07.02.2015, the Bank Manager

demanded Rs. 6 Lakhs for settlement. Further, the Bank approached the District Magistrate, Muzaffarpur *vide* Case No. 30 SARFAESI Act/2013-14, for physical possession of the mortgaged property and the District Magistrate, Muzaffarpur without appreciating the proceedings under Section 13 of the Act proceeded and passed an order dated 22.10.2023, directing the Sub-Divisional Officer, East-Muzaffarpur to depute Executive Magistrate with Police force and to take physical possession of the land and building of the petitioner.

8. It is also the contention of the Learned counsel for the petitioners that on 09.12.2015, without any information to the petitioner, Sub-Division Magistrate, East-Muzaffarpur *vide* Memo No. 2597 dated 09.12.2015 deputed respondent No. 7 on 24.12.2015 for taking possession of the building of the petitioner, who in turn, came to the property and directed the daughter-in-law of the petitioner to vacate the building and also sought for an undertaking to vacate the building within a month. As the action of the respondent No. 7 was illegal and arbitrary, the present petition has been filed for the reliefs stated above.

9. On 11.07.2017, Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondent-Bank. On that date, the submission was made by the Learned counsel for the petitioners that the property, in question, has auctioned, third party right has not been created inasmuch, he is ready to pay all the outstanding dues including the interest within a period of three months.

10. Considering the said submissions, this Court directed the petitioner to pay the principal amount of Rs. 2.90 Lakhs by 25th July, 2017 and further directed the Bank to accept the aforesaid principal amount and to file counter affidavit, giving details of outstanding dues including the interest and directed the Registry list the matter on 27th July, 2017. It was also directed that, in the meantime, the possession of the petitioner will not be disturbed, subject to payment of principal amount.

11. Further, the Learned counsel for the petitioners contended that as per the directions of this Court, the principal amount was paid by the petitioner on 25.07.2017.

12. The order of this Court dated 21.08.2017 also disclose that in terms of the earlier order of this Court dated

11.07.2017, the petitioner has deposited the principal amount, which he has taken on loan. The Bank has come out with a fact that the property, in question, was auctioned sold on 15.11.2012, and itself a third party right has been created in the year 2013. Later, notice was issued to the respondent No. 8, who was the Auction Purchaser.

13. A detailed counter was filed by the respondent Nos. 1 to 3, wherein it disclose that the petitioner had availed the loan which was defaulted by him and accordingly, the Bank Authority has issued Notice under Section 13(2) SARFAESI Act to the borrower against the mortgagor and inspite of it, no payment was made. The counter also disclose that the auction took place on 06.10.2012, and one Aditya Kumar succeeded in the auction with a bid price of Rs. 7.55 Lakhs and the Sale Certificate was issued to Aditya Kumar, after receiving the payment of remaining amount. The Bank took steps for delivery of the possession to the purchaser *vide* Letter No. RO/RELV/2012-12/41 dated 02.01.2013 and requested the District Magistrate, Muzaffarpur for providing Escort Police Force with Magistrate for actual physical possession. Further, the delivery of the possession could not

be given to the auction purchaser, for which the auction purchaser has filed a complaint bearing Complaint Case No. 2541 of 2013, for which cognizance has been taken against the Bank Officials on 12.06.2014, for the offences punishable under Section 420, 120 (B) of the Indian Penal Code and the same is pending before the Criminal Court.

14. The Possession notice issued under Section 13(4) of the SARFAESI Act was received by the son of the petitioner, namely, Jitendra Kumar (Petitioner No. 1.3). The DRT, Patna in its order dated 31.10.2012, in S.A. No. 171 of 2012, filed by the petitioner, had given a finding that nothing wrong was found in the action of the Bank. Further, the order of the DRT directs the applicant to file representation within 7 days, raising all the points before the Authorized Officers of the Bank and that the Bank will consider the same, but no such representation was received by the Bank within the stipulated time.

15. It is specifically contended in the counter, that the writ petition is not maintainable and the petitioner has to approach the DRT or if aggrieved by the orders of the DRT, Patna he has to prefer an appeal against the order of the DRT

before the Debt Recovery Appellate Tribunal, Allahabad ('DRAT' in short) and therefore, prayed to dismiss the writ petition as it is devoid of merits.

16. On the other hand, the counter of the respondent No. 8 i.e. Auction Purchaser, disclose that he purchased the property of the petitioner in the auction and deposited the entire amount in the year 2012 and despite of it, the Bank has not given possession over the property, in question, and he is ready to relinquish his right, if the Bank repays the principal amount along with the statutory interest.

17. Heard Learned counsel for the petitioners as well as Learned counsel for the respondents.

18. Perused the record. It is pertinent to mention that during the pendency of Writ petition, the sole petitioner died and his legal heirs are substituted by the orders of this Court as petitioner Nos. 1 to 3.

19. The Hon'ble Supreme Court of India in the case of ***PHR INVENT EDUCATIONAL SOCIETY VS. UCO BANK AND OTHERS*** reported in ***2024 SCC OnLine SC 528*** in para 21, 22, 29 & 30 stated that:

*“.....**21.** Recently, in the case of Celir LLP [Celir LLP v. Bafna Motors (Mumbai) P. Ltd., (2024) 242 Comp Cas 45 (SC); (2024) 2 SCC 1: 2023 INSC 838.], after surveying various judgments of this court, the court observed thus:*

> *“More than a decade back, this court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act, and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and exercise of jurisdiction under article 226 of the Constitution. Even after, the decision of this court in United Bank of India v. Satyawati Tondon [(2010) 158 Comp Cas 251 (SC); (2010) 8 SCC 110; 2010 INSC 428: (2010) 3 SCC (Civ) 260.], it appears that the High Courts have continued to exercise its writ jurisdiction under article 226 ignoring the statutory remedies under the RDBFI Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.”*

***22.** It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should not entertain a petition under article 226 of the Constitution particularly when an alternative statutory remedy is available.*

***29.** It could thus clearly be seen that the court has carved out certain exceptions when a petition under article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

***30.** It has however been clarified 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."*

20. The Hon'ble Supere Court in the case of ***UNITED BANK OF INDIA VS. SATYAWATI TONDON AND OTHERS*** reported in ***2010 SCC Online SC 776*** in para 43, 44 & 45 stated that:

***"….43.** Unfortunately, the High Court 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."*

21. The Hon'ble Apex Court in these judgments has time again stated the High Courts not to interfere under

Article 226 of the SARFAESI Act proceedings, except under the exceptions carved out in the judgment of the ***PHR INVENT EDUCATIONAL SOCIETY*** (supra).

22. Admittedly, the present facts of the case do not come under the exceptions of the aforesaid judgments of the Hon'ble Apex Court. As there is an alternative remedy available for the petitioners, the Writ petition itself is not maintainable.

23. However, the petitioner is at liberty to challenge it before the appropriate Forum against the orders of the Bank.

24. With the above observations, this writ petition is dismissed as it is devoid of merits.

25. Interlocutory Application(s), if any, shall stand also dispose of.

(G. Anupama Chakravarthy, J)

Shanu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.07.2024.
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