

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.478 of 2024
In
Civil Writ Jurisdiction Case No.2374 of 2023

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1. Pankaj Kumar Son of Late Kishun Prasad Resident of Road No. 14, East Ashok Nagar, PO - Lohia Nagar, PS- Kankarbagh, District - Patna.
 2. Anuj Kumar, Son of Kishun Prasad Resident of Road No. 14, East Ashok Nagar, PO - Lohia Nagar, PS- Kankarbagh, District - Patna.

... .. Appellant/s

Versus

1. The Union of India through the Principal Secretary, Department of Finance, New Delhi.
2. The Chairman-cum-Managing Director, Union Bank of India.
3. The Regional Manager, Union Bank of India, Patna Region, Patna.
4. The Branch Manager, Union Bank of India, Recovery Branch, Union Bank of India, first floor, Steel House near police check-post, Boarding Road, Patna.
5. The State of Bihar through the District Magistrate, Patna.
6. Mr Sudhanshu Kumar @ Sudhanshu Shekhar, Son of Akshay Kumar Pathak, Resident of plot no.245(P), 13A, East Ashok Nagar, PS Kankarbagh, District Patna, Bihar 800020.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar Tiwari, Advocate
		Mr. Pawan Kumar Verma, Advocate
For the Respondent/s	:	Mr. Shivendra Kr. Ray, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 28-08-2024 Defect(s) ignored.

2. The petitioner is aggrieved by the auction intended of his property by the respondent-bank. The respondent-bank has taken proceedings against the property under the Securitization and Reconstruction of Financial Assets and



Enforcement of Security Interest Act, 2002 (for brevity 'Sarfaesi Act'). The learned Single Judge dismissed the writ petition holding that, if at all, the petitioner has a remedy, it is under Section 17 of the Sarfaesi Act before the Debt recovery Tribunal.

3. Before us learned Counsel for the appellant argued that the property which is now sought to be auctioned by the bank is owned by the appellant and has not been mortgaged to the bank. In fact, the bank has wrongly proceeded against the property mortgaged because there was fraudulent manipulation of the boundaries. The petitioner has filed a Civil Suit numbered as Title Suit No. 14 of 2011 before the appropriate Civil Court having jurisdiction wherein a declaration has been sought. In fact, the guarantor who mortgaged the property has sought intervention in the suit which has been rejected.

4. The learned Single Judge has also noticed the pendency of the suit while dismissing the writ petition on the ground of alternate efficacious remedy and also noticing two judgments of the Hon'ble Supreme Court; one in *State of Bihar v. Jain Plastics and Chemicals Ltd.*; (2002) 1 SCC 216 and *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*; (2004) 3 SCC 553.



5. When the petitioner has already approached the Civil Court, it was for the petitioner to get an injunction, if at all, from the Civil Court against the auction. Admittedly, the suit was filed in the year 2011 and there is no injunction obtained till now.

6. We find absolutely no reason to invoke the extraordinary remedy under Article 226 of the Constitution of India.

7. The Letters Patent Appeal stands dismissed *in limine*.

8. IA's, if any, stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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