

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.593 of 2019

In

Civil Writ Jurisdiction Case No.4310 of 2019

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Akhileshwar Prasad Singh S/o Late Brijnandan Prasad Singh Resident of
Mohalla- Ghughari Tand, Dandibag, New Colony, P.S.- Civil Line, District-
Gaya.

... .. Appellant/s

Versus

1. The Regional Manager, State Bank of India Antaghat, Patna.
2. The Regional Industrial Officer, State Bank of India, A.P. Colony, Gaya.
3. The Authorised Officer, State Bank of India, A.P. Colony, Gaya.
4. The Branch Manager, State Bank of India, Purani Godown, K.P. Road, Gaya.
5. Shyam Sunder Prasad (Loanee) S/o Kishun Mahto Prop. of M/S Friends Marketing Kushwaha Market, Koeribari, P.S. Civil Line, District- Gaya, Permanently residing at Village- Pirauta, P.S. Sirdala, Distt. Nawada.
6. Ramesh Kumar (Auction Purchaser) S/o Ramadhar Singh Resident of North Church Road, Gaya, District- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharmendra Kumar Sinha, Advocate

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 25-09-2024

1. Heard learned counsel for the appellant and learned
counsel for the respondents

2. The appellant has preferred this appeal against the
order dated 16.4.2019 whereby the learned Single Judge was



pleased to dismiss CWJC no.4310 of 2019.

3. The facts in brief are that pursuant to an action in a proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' in short), the appellant who was guarantor of the loanee/respondent no.5 moved this Court by filing CWJC no.7236 of 2011 praying for an order to prohibit the respondent-Bank from taking any coercive steps with respect to the property mortgaged by the appellant. This Court took note of the fact that the loanee (respondent no.5) having defaulted in repayment of the loan, the Bank took steps under the SARFAESI Act and the property mortgaged by the guarantor/appellant was auction sold to respondent no.6. This Court by its order dated 18.11.2016 disposed of the writ application granting liberty to the appellant to approach the Tribunal for ventilation of his grievance in accordance with law. The relevant portion of the order dated 18.11.2016 is reproduced herein below:

“On a consideration of the submissions of the parties, in the opinion of the Court, the petitioner should be granted liberty to approach the Tribunal for ventilation of his grievance in accordance with law.

The writ application is disposed of permitting the petitioner to avail the said



remedy.”

4. The appellant preferred S.A. no.121 of 2017 before the Debts Recovery Tribunal ('DRT' in short), however the same was dismissed by order dated 28.8.2018 passed by the Presiding Officer, DRT, Patna. The appellant challenged the order dated 28.8.2018 passed by the Presiding Officer, DRT, Patna in CWJC no.4310 of 2019 which was dismissed by order dated 16.4.2019, impugned herein.

5. It is submitted by learned counsel appearing for the appellant that having been dispossessed of his residential house, he moved to Delhi for his livelihood where he has been residing. He received no information about the disposal of CWJC no.7236 of 2011 and as such, could not file the appeal (S.A. no.121 of 2017) in time. It is further submitted that the appellant having visited his native place in April, 2017 and learnt about the disposal of CWJC no.7236 of 2011 by this Court granting him liberty to approach the Tribunal and accordingly he got in touch with his counsel and filed the case before the DRT, Patna on 22.6.2017. It is submitted that both the Presiding Officer, DRT, Patna as also the learned Single Judge failed to appreciate that it was for reasons beyond control of the appellant that there had been some delay in filing of the case. As such, the delay should have been condoned and the appeal decided on its own



merits.

6. The appeal is opposed by learned counsel appearing for the respondents. It was submitted by learned counsel for the respondents that an appeal under the SARFAESI Act is preferred under section 17 within a period of 45 days from which any person is aggrieved by measures taken under section 13(4) of the Act. In the instant case, steps were taken by the Bank in the year 2011. Though by order dated 18.11.2016 in CWJC no.7236 of 2011, the appellant was granted liberty to approach the Tribunal, nevertheless he did not move an appeal within 45 days but moved after more than six months with no reasonable explanation for the delay. Learned Presiding Officer, DRT and the learned Single Judge rightly rejected the prayer of the appellant. It is prayed that the instant appeal be dismissed.

7. Having heard learned counsel for the parties and having perused the material on record, this Court finds that the loanee/respondent no.5 having defaulted in payment of loan, the Bank moved under the SARFAESI Act and as per the case of the appellant took over the mortgaged property of the appellant in their possession on 13.6.2011. Though the appellant filed Complaint Case no.1014 of 2011 in the Court of learned Chief Judicial Magistrate, Gaya, however he did not file any appeal



under section 17 of the SARFAESI Act. The appellant instead moved this Court in CWJC no.7236 of 2011 which was disposed by order dated 18.11.2016 granting liberty to the appellant to approach the Tribunal for ventilation his grievance in accordance with law. The appellant instead of filing an appeal within 45 days as provided under section 17 of the SARFAESI Act, filed the appeal after a delay of more than 5 ½ months with no reasonable explanation for the same.

8. The appellant has not brought on record the application filed by him for condonation of delay in DRT, Patna, however paragraph no.4 of the order passed by DRT, Patna which deals with the contents of the delay condonation petition of the appellant is reproduced herein below for ready reference:

“4. It is submitted by ld. Counsel of applicant that the applicant has challenged the SARFAESI Actions, before the Hon'ble High Court of Patna, by way of filing CWJC No. 7236 of 2011, which was decided by the Hon'ble High Court of Patna, on 18.11.2016, in which the liberty was given to the applicant to approach the Tribunal for ventilation of his grievance in accordance with law and thereafter, the applicant has approached the Tribunal, by filing the SA on 22.6.2017. It is further submitted that the applicant was dispossessed from his residential house; therefore,



the applicant went to Delhi for his livelihood. It is further submitted that within time, no information was received to the applicant; therefore, he could not file the SA in time. It is further submitted that the applicant came back to his native place in April 2017 and thereafter, he approached his counsel for filing the case. It is further submitted that the applicant again visited at Patna and met his counsel in the month of May 2017 and decided to file the SA before the tribunal and after preparing the case, the present SA has been filed on 22.6.2017. It is further submitted that there is no intentional delay on the part of the applicant, in filing of the SA and requested that the limitation petition may be allowed and delay may be condoned.”

9. Further, with respect to the explanation for delay, the appellant has given the explanation in paragraph nos.17 and 18 of the writ application which is reproduced herein below:

“17. That the order passed by Hon'ble High Court was communicated to petitioner but at that time he was residing at Delhi with his family members and he came back his village home in the month of April 2017 and then he met his counsel and knew details of the order passed by Hon'ble High Court.

18. That thereafter petitioner again came to his counsel in the month of May 2017 and gave other relevant papers and thereafter after



preparing the case S.A. No. 121/2017 was filed before Debt Recovery Tribunal, Patna the petitioner has filed a separate application for condonation of delay in filing the Appeal. The petitioner has also deposited the relevant court for asked to deposit in this case.”

10. On perusal of the above explanation furnished by the appellant, it transpires that though the order of this Court was communicated to the appellant soon after it being passed in November, 2016, he chose not to take any steps with respect to filing of an appeal till April, 2017 when he met his counsel for the first time and provided him the papers for filing the appeal only in May, 2017 and it was filed finally on 22.6.2017.

11. This Court finds that though section 17 of the Act provides for an appeal to be filed within 45 days, even on the liberty having been granted by this Court by its order dated 18.11.2016, the appellant acted in a very casual manner in so far as even as per his own admission, he did not provide the relevant documents for filing of the appeal to his counsel till May, 2017. Further, the explanation furnished by the appellant besides being vague, unsubstantiated are lacking in material details with no dates whatsoever. The Tribunal and the learned Single Judge rightly rejected the prayer of the appellant on the ground of limitation.



12. This Court finds no merit in the instant appeal and
the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

Saurabh/-

AFR/NAFR	
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