IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11369 of 2023

==

Lalit Kumar Chaudhary S/o Sukhnandan Chaudhary, R/o Vill-Kolhua Paigambarpur, PS-Ahiyapur, District-Muzaffarpur.

... ... Petitioner/s

Versus

1. Union of India through its Secretary (Financial Services), Department of Financial Services, Ministry of Finance, New Delhi.
2. Debts Recovery Tribunal 2nd Floor, Karpuri Thakur Sadan, Ashiana Digha Road, Patna through its Registrar.
3. Chief Manager cum Authorized Officer, Indian Bank (Erstwhile Allahabad Bank), J.L. Road Branch, Tilak Road Maidan, Muzaffarpur, Bihar.
4. Branch Manager, Indian Bank (Erstwhile Allahabad Bank), J.L. Road Branch, Tilak Road Maidan, Muzaffarpur, Bihar.
5. Rita Mishra, W/o Pradeep Kumar Mishra, R/o Near Shyam Mandir, Pankaj Market Road, Muzaffarpur (Bihar).

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Mrityunjay Kumar, Adv.
For the Respondent/s	:	Mr.Additional Solicitor General Mr. Ajit Kumar Sinha, Adv. Miss. Dilkesh Khan, Adv. Miss. Minu Kumari, Adv. Mr. Pravin Kumari, Adv.

==

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

11 23-10-2024 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. Having regard to the above, the relief sought in the

present writ petition cannot be granted. Further it is stated that during pendency of the present writ petition, the Debt Recovery Tribunal, Patna, has disposed of S.A. No. 297 of 2022 vide order dated 02.01.2024.

3. Accordingly, the present writ petition is disposed of granting liberty to the petitioner to challenge the order dated 02.01.2024 of Debt Recovery Tribunal, Patna passed in S.A. No. 297 of 2022 before the Debt Recovery Appellate Tribunal, Allahabad if so advised.

4. The Debt Recovery Appellate Tribunal, Allahabad shall take into consideration the provisions of Section 14 of the Limitation Act, if any such application is filed for condonation of delay.

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

(A. Abhishek Reddy , J)

Bhardwaj/-

U			