IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14534 of 2024

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Md. Ajim @ Md. Ajim Uddin, S/o Md. Ismaiel, R/o Village- Purani Bajar, Khaira Road, Jamui, P.S.- Jamui, District- Jamui.

... ... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Jamui.
2. The Zonal Manager, Punjab National Bank, Zonal office, Patna, 2nd Manjil Chankya Toar.
3. The Circle Office, Circle office, Punjab National Bank, Circle Sastra, Bihar Sharif, Dist.- Nalanda.
4. Sastra Head, Punjab National Bank Circle, Sastra, Bihar Sharif, Dist.- Nalanda.
5. The Branch Manger, Punjab National Bank, Branch- Jamui, Dist.- Jamui, Pin- 811307.
6. Gagan Gupta, S/O Umashankar Prasad Gupta, R/O Village- Shikandra, Ward No. 10, Nagar Panchayt, P.S. Sikandara, District Jamui.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pankaj Kumar Sinha, Adv.
For the Respondent/s	:	Mr.Government Pleader (2)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

2 13-11-2024 It is stated by the learned counsel appearing on behalf of the petitioner that when the matter was pending before the Debt Recovery Tribunal, Patna, vide DRT Case No. 317/2024, the respondents-Bank has auctioned the subject property. Learned counsel has stated that though the petitioner has entered his appearance before the Debt Recovery Tribunal, Patna the respondents-Bank without awaiting the final outcome of the case has auctioned the subject property and issued sale certificate in favour of the auction purchaser (Respondent No. 6). Further it is stated by the learned counsel that the physical

possession of the subject property as on date has not been handed over to the Respondent No. 6 and the petitioner is in possession of the same. Learned counsel has therefore prayed this Court to protect the interest of the petitioner pending adjudication of the matter before the Debt Recovery Tribunal, Patna in DRT Case No. 317/2024.

2. Learned counsel appearing on behalf of the respondents-Bank has vehemently opposed the very maintainability of the present writ petition and has stated that the present writ petition is not maintainable as the petitioner has an alternative remedy of filing a separate application under Section 17 SARFAESI Act or approaching the Debt Recovery Tribunal, Patna in the pending matter and filing an appropriate application. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

3. Having regard to the above made submissions and also duly taking into consideration the Judgment passed by the Hon'ble Supreme Court in ***Celir LLP v. Bafna Motors (Mumbai) (P) Ltd. (2024) 2 SCC 1,*** *wherein the Hon'ble Supreme Court* has held as under;

> *"105. We summarise our final conclusion as under:*
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> *(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."

The present writ petition is disposed of granting liberty to the petitioner to approach the Debt Recovery Tribunal, Patna either by way of separate application or by filing an appropriate application in the pending O.A.

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

Bhardwaj/-

(A. Abhishek Reddy , J)

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