

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1327 of 2019

In
Civil Writ Jurisdiction Case No.10310 of 2019

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Usha Kumari alias Usha Devi, W/o Raj Kumar Prasad, Resident of
Gurudwara Road, Fatehganj, P.O. and P.S. - Gaya, District- Gaya.

... .. Appellant/s

Versus

1. The Regional Manager, State Bank of India, Antaghat, Patna.
2. The Branch Manager, State Bank of India, A.P. Colony, Gaya.
3. The Authorised Officer, State Bank of India, A.P. Colony, Gaya.
4. Anuj Kumar, S/o Indradeo Prasad @ Babban Singh, Resident of Mohalla-
Gurudwara Road, P.S.- Kotwali, Dist. - Gaya.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 22-07-2024

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

2. The instant appeal has been preferred by the writ
petitioner-appellant against the order dated 2.9.2019 passed in
CWJC no.10310 of 2019.

3. The case of the appellant in brief is that the
respondent no.4 had taken a house loan of Rs.61 lacs from the
State Bank of India and having defaulted payment of the loan
amount, the Bank started a proceeding under the



Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' in short) for recovery of the loan and a notice under section 13(2) was sent to the respondent no.4 on 24.9.2010. Further, a notice dated 5.2.2018 was sent to the appellant stating therein that as a result of default in payment of the loan amount, the property in question had come in possession of the Bank. The total amount due was Rs.29,74,750/-. The appellant was asked to vacate the house or else the same would be got vacated with the help of police force. The appellant filed CWJC no.14782 of 2011 which was dismissed as withdrawn with liberty to the appellant to avail the statutory remedy by way of appeal under section 17 of the SARFAESI Act. The appellant preferred an appeal (S.A. no.45 of 2018), which was dismissed by order dated 21.12.2018 on the ground of delay. CWJC no.10310 of 2019 preferred by the appellant against the said order was also dismissed by order dated 2.9.2019 by the learned Single Judge. It is against this order that the instant appeal has been preferred.

4. It is submitted by learned counsel for the appellant that in the application for condonation of delay filed by the appellant in S.A. no.45 of 2018, it had been pleaded on her behalf that she was a lady and due to lack of awareness, could



not file the appeal in time. As a result of dismissal of the appeal, the appellant suffered irreparable loss and injury and she was pursuing her case since the year 2011 and by order dated 8.3.2016, this Court had remanded the matter for the same to be considered by the tribunal. It was submitted that tribunal as also the learned Single Judge should have considered that the delay was not intentional.

5. Having perused the material on record, this Court finds that the appellant was served with a notice of demand under the SARFAESI Act sometime in the year 2010-2011. She challenged the same by filing CWJC no.14782 of 2011, however, the same was dismissed as withdrawn by order dated 8.3.2016 with liberty to the appellant to file an appeal under section 17 of the SARFAESI Act. Section 17 of the SARFAESI Act provides for any person including the borrower to file an appeal within 45 days of the measure being taken as referred to in section 13(4) by the secured creditor or his authorized officer. No statutory appeal was preferred within the aforesaid period against the notice served on the appellant in the year 2010-2011. Even after the writ application (CWJC no.14782 of 2011) having been dismissed as withdrawn by this Court on 8.3.2016 with liberty to avail the statutory remedy as provided under



section 17, this Court finds that the appeal was preferred only on 5.3.2018 ie two years after withdrawal of the writ application.

6. On further perusal of the records of the case, this Court finds that no explanation whatsoever has been furnished for this period of two years ie from 8.3.2016 to 5.3.2018 either in the writ application before the learned Single Judge nor in the instant appeal. As such, this Court finds no error in the order of Debt Recovery Tribunal having dismissed the appeal on the ground of limitation nor any error in the order of the learned Single Judge dismissing the writ application.

7. The Court finds no merit in the instant appeal and the same is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Saurabh/-

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CAV DATE	
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