

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17782 of 2022

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Bajrang Prasad Sharma S/o Late Hiralal Sharma, Resident of Mohalla-
Hasanpur Surat, P.S.- Patori, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Bihar, Patna.
2. The District Magistrate, Samastipur.
3. The Additional Collector-cum-Additional District Magistrate, Samastipur.
4. The Circle Officer, Patori, District- Samastipur.
5. The State Bank of India, Corporate Centre, Madam Cama Road, Mumbai through its Chairman.
6. The Assistant General Manager, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West Gandhi Maidan, Patna.
7. The Authorized Officer, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West Gandhi Maidan, Patna.
8. M/S Madhu Traders, Prop. Madhu Chaudhary, W/o Sri Abhay Shankar Chaudhary, Resident of Mohalla- Hasanpur Surat, P.S.- Patori, District- Samastipur.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 449 of 2023

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1. M/s Madhu Traders Village-Hasanpur Surat, P.O. and P.S.-Patory, District-Samastipur (Bihar), through its proprietor Smt. Madhu Choudhary.
2. Smt. Madhu Choudhary, wife of Sri Abhay Shankar @ Abhay Shanker Choudhary, Village-Hasanpur Surat, P.O. and P.S.-Patory, District-Samastipur (Bihar) (Proprietress of M/s Madhu Traders).
3. Abhay Shanker @ Abhay Shanker Choudhary, son of Late Bishun Choudhary, Village-Hasanpur Surat, P.O. and P.S.-Patory, District-Samastipur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Government of Bihar, Patna.
2. The District Magistrate, Samastipur, District-Samastipur.



3. The Additional Collector-cum-Additional District Magistrate, Samastipur, District-Samastipur.
4. The Circle Officer, Patory, District-Samastipur.
5. The State Bank of India, Corporate Centre, Madam Kama Road, Mumbai (Maharashtra) through its Chairman.
6. The Chairman, State Bank of India, Corporate Centre, Madam Kama Road, Mumbai (Maharashtra).
7. The Assistant General Manager, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West of Gandhi Maidan, Patna (Bihar).
8. The Authorized Officer, State Bank of India, Stressed Assets Recovery Branch (SARB), 2nd Floor, Patna Main Branch Building, West of Gandhi Maidan, Patna (Bihar).

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 17782 of 2022)

For the Petitioner/s : Mr. Suneil Kumar Thakur, Adv.

For the Respondent/s : Mr. Manoj Kumar, A.C. to GP-4

For the SBI : Mr. A.K. Sharan, Adv.

: Mr. P.K. Sharan, Adv.

For respondent No.8 : Mr. Rajendra Narain, Sr. Adv.

: Mrs. Anju Kumari, Adv.

(In Civil Writ Jurisdiction Case No. 449 of 2023)

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.

Mrs. Anju Kumari @ Anju Narain, Adv.

For the State : Mr. Babita Kumari, A.C. to SC-1

For the Bank : Mr. A.K. Sharan, Adv.

: Mr. P.K. Sharan, Adv .

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

11 16-04-2024

Heard the learned counsel for the parties and the
learned counsel appearing on behalf of the Bank.

2. C.W.J.C. No. 17782 of 2022 is filed by the auction
purchaser and C.W.J.C. No. 449 of 2023 is filed by the borrower.

3. The prayer made in C.W.J.C. No. 17782 of 2022 is
as follows;

“That this is an application for issuance of a writ



in the nature of mandamus commanding and directing the respondent authorities to ensure the delivery of the physical possession of the immovable property earlier lying in the name of the private respondent namely Smt. Madhu Chaudhary W/O Sri Abhay Shankar Chaudhary vide registered Sale Deed no. 17343 dated 21.12.2002 measuring an area of 3 decimals falling under Khesra No. 575/78(O) and 852 (N) under Khata No. 203, Mohalla- Hasanpur Surat, Thana No. 211, District Samastipur, having its boundary as North: Shiv Gopvind Pandey, Sourt: Abhay Shankar Chaudhary, East: Shrilal maheshwari & West: Road, which the petitionen purchased through e-auction dated 07.09.2021, sold on behalf of the State Bank of India as secured creditor, in favour of the petitioner (hereinafter referred to as the property in question for brevity) and/or be pleased to grant such other relief/relieves for which the petitioner may be found legally entitled to be in the facts and circumstances of the case.”

4. The prayer made in C.W.J.C. No. 449 of 2023 is as follows;

“That the present writ application is being filed on behalf of the petitioners for issuance of an appropriate writ/writs, order/orders direction/directions for the following reliefs;

(a) For issuance of writ in the nature of mandamus directing the respondent Bank to supply to the petitioners the total outstanding/



Bank's dues in break-up after adjusting the amount already paid to the Bank including the entire monthly rent paid by the Bank against the rented ATM premises along with statement of account since the date of NPA showing the rate of interest charged in the loan account.

(b) For issuance of writ in the nature of mandamus directing the respondent Bank to charge the interest on the reducing balance of the loan amount since the date of NPA after adjusting the amount already paid to the Bank including the entire monthly rent paid by the Bank against the rented ATM premises,

(c) For issuance of writ in the nature of mandamus directing the respondent Bank to give sufficient time of at least 6 months to repay the loan after supplying the total outstanding/ Bank's dues in break-up after adjusting the amount already paid to the Bank including the entire monthly rent paid by the Bank against the rented ATM premises along with statement of account since the date of NPA showing the rate of interest charged in the loan account,

(d) For any other relief or reliefs for which the petitioner is entitled under law as well as on facts."

5. Learned senior counsel appearing on behalf of the petitioner in C.W.J.C. No. 449 of 2023 has stated that the property of the petitioner has been mortgaged to the respondent-Bank against a loan account and subsequently, the



same has been classified as 'NPA'. Thereafter the Bank in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short the SARFAESI Act) conducted auction on 17.09.2021 but the confirmation of the auction sale was made subject to the outcome of S.A. No. 79 of 2020 filed by the petitioner and the same is pending before the Debts Recovery Tribunal, Patna (For short DRT). He further submits that subsequently the petitioner has cleared the entire loan amount and therefore, seeks a direction to set aside the Sale Certificate issued in favour of the respondent-auction purchaser.

6. Per contra, the learned counsel for the respondent-auction purchaser stated that he has participated in the auction conducted by the Bank and paid the entire sale consideration. Though the sale certificate has been issued in favour of the auction purchaser, till date possession has not been handed over to him. Therefore, left with no alternative remedy, the auction purchaser has approached this Court by way of C.W.J.C. No. 17782 of 2022.

7. Having regard to the fact that the S.A. No. 79 of 2020 is pending adjudication before the DRT, Patna and the auction, which was conducted by the Bank, was subject to



the outcome of S.A. No. 79 of 2020, this Court is of the opinion that the ends of justice would be served, if the DRT, Patna is directed to dispose of the main S.A. No. 79 of 2020 on merits duly taking into account the submissions made by the borrower as well as the auction purchaser. As it is stated that the auction purchaser is not made party to the proceeding before the DRT, the petitioner in C.W.J.C. No. 449 of 2023 (applicant before the DRT) is directed to implead the auction purchaser as party respondent in S.A. No. 449 of 2020 pending before DRT, Patna. On such application being filed, the DRT, Patna shall implead the auction purchaser and issue notice to him. The auction purchaser shall participate in S.A. No. 79 of 2020 and file his objections or an application seeking physical possession of the subject property. The DRT, Patna shall endeavor to dispose of the S.A. No. 79 of 2020 as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order.

8. It is needless to mention that before any orders are passed, the parties to the litigation shall be given an opportunity of hearing and the documents filed in support of this case taken into account by the DRT, Patna. Till such time to final order are passed in S.A. No. 79 of 2020, status



quo with regard to possession shall be maintained by the parties.

9. With the above direction, both the writ petitions stand disposed of.

(A. Abhishek Reddy , J)

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