IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3390 of 2024

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1. Sri Akhouri Gopal, male, aged about 64 years, S/o Late Akhouri Banshidhar R/o Mohalla-Chand Chaura, P.S.-Civil Lines, Gaya, District-Gaya-823001.
2. Shri Akhauri Nishant, male, aged about 40 years, S/o Akhauri Gopal R/o Mohalla-Chandchaura, P.S.-Civil LInes, Gaya, District-Gaya-823001.
3. Sri Akhauri Nitesh, male, aged about 38 years, S/o Akhauri Gopal R/o Mohalla-Chandchaura, P.S.-Civil LInes, Gaya, District-Gaya-823001.
4. Mrs. Megha Akhauri, female, aged about 45 years, W/o Sri Pratiyush Akhauri, D/o Sri Akhauri Gopal R/o Mohalla-Chandchaura, P.S.-Civil Lines, Gaya, District-Gaya-823001.
5. Mrs. Neha Akhauri, female, aged about 44 years, W/o Sri Pranav Kumar, D/o Sri Akhauri Gopal R/o Mohalla-Chandchaura, P.S.-Civil LInes, Gaya, District-Gaya-823001.

... ... Petitioner/s

Versus

1. State Bank of India Branch at Dakbunglow Road, Patna SBI Specialized Commercial Branch, Account Migrated at State Bank of India, Stressed Assets Management Branch, 1st Floor, SBI Main Branch, Gandhi Maidan, Patna through Assistant General Manager.
2. Presiding Officer, Debt Recovery Tribunal Thakur Sadan, Ashiana Digha Road, Patna.
3. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Tagore Town, Allahabad-211002
4. Recovery Officer, Debt Recovery Tribunal, Karpuri Thakur Sadan, Ashiana Digha Road, Patna.
5. Sri Sheo Kailash Dalmia S/o Bishwanath Dalmia R/o 12, K.P. Road, Gaya, Bihar-823001.
6. M/s Ramnandi Automobiles Private Limited Regd. Office at Banshi Sadan, Chand Choura, P.S.-Civil Lines, Gaya through Sri Akhouri Gopal, Director, S/o Late Akhouri Banshidhar, R/o Mohalla-Chand Chaura, P.S.-Civil Lines, Gaya.
7. District Magistrate, Gaya.
8. Sub-Divisional Officer, Sadar, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arbind Kumar Jha, Advocate.

For the Respondent/s : Mr. Sanjiv Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

8 29-01-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

> *“.....for direction to Respondent No. 4 not to proceed with sale and handover possession of mortgaged property in execution of RP Case No. 520 of 2016 till the disposal of Appeal in view of the law laid down by Apex Court that Appeal is considered to be a continuation of suit and decree becomes executable when the same is finally disposed of by Court of Appeal.*
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> *The petitioner further seeks declaration of law that Section 21 of the Recovery of Debt and Bankruptcy Act, 1993 will not apply where the appeal is filed against the dismissal of the counter claim of the borrower as in case of counter claim no money is due form the borrower to the bank.”*

3. It is the case of the petitioners that the Debts Recovery Appellate Tribunals (DRAT) without adverting to the provisions of the SARFAESI Act has passed the impugned order.

4. Learned counsel appearing on behalf of the petitioner has stated that the question of depositing half of the amounts due for entertaining the appeal under Section 21 of the DRT Act is not applicable where the petitioner is filing an

appeal challenging the order of rejection of the cross claim among other grounds. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and direct the DRAT to hear the appeal on merits and pass necessary orders.

5. Per contra, the learned counsel appearing on behalf of the Respondent-Bank as well as the Private-Respondent has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the present writ petition is not maintainable on two grounds; one that the appeal filed by the petitioner has already been disposed of and the petitioner has not bothered to challenge the final orders, second that the auction of the subject property was conducted and the sale certificate was issued to the private-respondent and, therefore, the present writ petition is not maintainable in view of the judgment of the Hon'ble Supreme Court.

6. The Hon'ble Supreme Court in the case of ***Celir LLP v. Bafna Motors(Mumbai) (P) Ltd.*** *r*eported in ***(2024) 2 SCC 1*** 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.

7. Having regard to the above-mentioned facts and circumstances, this Court is not inclined to entertain the present writ petition and the same is disposed of granting liberty to the petitioner to avail the remedies as available to him under the law.

8. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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