IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6105 of 2024

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1. Dharmendra Singh Son of Baleshwar Prasad Singh Resident of Village/Mohalla- Jai Prakash Nagar, Bheriya Rahia, B.M.P.-7, P.O and P.S.- Katihar, District- Katihar(Bihar).
2. Shailendra Kumar Singh Son of Baleshwar Prasad Singh Resident of Village/Mohalla- Jai Prakash Nagar, Bheriya Rahia, B.M.P.-7, P.O and P.S.- Katihar, District- Katihar(Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Finance, Government of Bihar, Patna.
2. The District Magistrate, Katihar, District- Katihar(Bihar).
3. The Superintendent of Police, Katihar, District- Katihar(Bihar).
4. The Registrar, District Registry Office, Katihar, District- Katihar(Bihar).
5. The Indian Overseas Bank Through the Regional Manager, Nasima House, Near Gandhi Maidan, Patna-800001(Bihar).
6. The Authorized Officer, Indian Overseas Bank, Katihar Branch, Hardayal Road, Katihar, Pin Code- 854105(Bihar).
7. The Branch Manager, Indian Overseas Bank, Katihar Branch, Hardayal Road, Katihar, Pin Code-854105(Bihar).
8. M/S Hajipur Beej Bhandar through its Proprietor Sri Ram Ekbal Singh Son of Late Shyam Lal Singh. Resident of Mohallah- Amla Tola, New Market, P.O and P.S.- Katihar, District- Katihar(Bihar).
9. Arun Kumar Singh @ Anil Singh Son of Ram Ekbal Singh, Resident of Mohallah- Amla Tola, New Market, P.O and P.S.- Katihar, District- Katihar(Bihar).
10. Abhay Kumar Son of Basudeo Mehta, Resident of Mohallah- Durga Asthan, Colony No.1, P.O. and P.S.- Katihar, District- Katihar (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhishek
For the Respondent/s	:	Mr. Standing Counsel (3)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 25-08-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

"A. For setting aside an Order dated 22.02.2024 passed by the District Magistrate, Katihar vide Memo No.581 by which the direction was issued for delivery of possession on the request of Respondent IInd Set over the residential house of the Petitioners by ignoring the Order dated 10.02.2024 passed by the District Magistrate, Katihar himself by which Respondent IInd Set was directed to approach the Debt Recovery Tribunal, Patna for recovery of Loan Amount as Private Respondent Arun Kumar Singh has committed fraud with the Respondent Bank by keeping a forged Sale Deed with respect to the property of the Petitioners.

B. For directing the Respondent IInd Set to proceed or to take steps, with respect to the property of the Petitioners, as per the Inquiry Report dated 30.08.2022 submitted by the Lead District Manager, Katihar as well as Memo No. 3084 dated 10.09.2022 issued by the District Magistrate, Katihar directing the Branch Manager, Indian Overseas Bank, Hardayal Road, Katihar to take steps for filing a case before the Debts Recovery Tribunal, Patna for recovery of Loan Amount as well as for proper adjudication of the dispute as raised by the Petitioner because in the Inquiry Report it has transpires that the Respondent III Set has committed fraud by taking Loan over the property of the Petitioner by producing fake Sale Deed as an Equitable Mortgage.

C. For directing the Respondent I" and IInd Set to open the lock which has been put on the main door of the residential house of the Petitioners in order to show the delivery of possession over the same whereas inside of the residential house the goods and articles of the Petitioners are kept and the same are still there.

D. For directing the Respondent-Bank Authorities to make a proper Inquiry with respect to the fact submitted in the Inquiry Report submitted by the Lead District Manager, Katihar showing conspiracy of the Bank Employee with the Respondent III'd Set who in connivance with each other granted/ obtained Bank Loan by keeping a forged document as an Equitable Mortgage which is not having legal effect over the right, title and possession of the Petitioners over their residential house and further a legal and suitable action may be taken against those persons who are involved in the forgery committed in order to grab the public money.

E. For directing the Respondent Authorities not to interfere with the possession of the Petitioners over their *residential house till the proper and final adjudication by the Competent Court.*

F. For grant of any other relief or reliefs in view of the facts and circumstances of the case for which the Petitioners are entitled too."

3. It is the case of the petitioners that they have purchased the subject property from the owner Sri Arun Kumar Singh (Respondent No. 9 herein) *vide* Registered Sale-deed No. 2447 dated 02.02.2021 (Annexure-P/1). Further, it is stated that the original owner of the land one Hassan had sold the same to four brothers namely, Laksham Singh, Ram Ekbal Singh (Respondent No. 8), Bindeshwar Singh and Sigheswhar Singh in the year 1991 and the four brothers in turn have partitioned the said land among themselves. Thereafter, the subject property was allotted to the Ram Ekbal Singh (Respondent No. 8 herein). Thereafter, Ram Ekbal Singh sold the subject property to his son Arun Kumar Singh (i.e., Respondent No. 9 herein) *vide* Registered Sale-deed dated 26.04.2005. That the name of the Arun Kumar Singh has been mutated in the municipal records. Further, it is stated that the respondent No. 9 i.e., Arun Kumar Singh had taken a loan from the Allahabad Bank and the loan was repaid and closed. That the Bank has issued the NOC in favour of Arun Kumar Singh. That after verification of the documents and also verifying that the loan obtained from Allahabad Bank (Indian Overseas Bank) by the

Respondent No. 9 was closed and NOC was issued. The petitioners have purchased the subject property along with the house vide Registered Sale-deed dated 02.02.2021 bearing No. 2447.

4. Learned counsel for the petitioners submits that the petitioners came to know that the respondent No. 8 i.e., Ram Ekbal Singh and his son Arun Kumar Singh took a loan from Indian Oversees Bank in the year 2010 and the subject property of the present writ petition was mortgaged by them by creating fake documents. That the loan account of the Indian Overseas Bank was declared as NPA, the subject property was auctioned and the sale certificate has been issued in favour of the respondent No. 10 herein (i.e., Abhay Kumar). Learned counsel has further stated that the petitioners came to know about the fraud played by Ram Ekbal Singh and his son Arun Kumar Singh and the loan taken by them on the basis of fake documents only when they have received a letter from the District Administration seeking to take possession of the subject property. Learned counsel has stated that the District Magistrate on an earlier occasion has directed the respondent-Bank to approach the DRT after finding. That the mortgage of the subject property by Ram Ekbal Singh and his son Arun Kumar Singh were on the basis of fake documents. Thereafter, the respondent-Bank has again applied to the District Magistrate under Section 14 of the SARFAESI Act, 2002 and the impugned notice has been issued to the petitioners. Learned counsel for the petitioners submits that once the D.M. has earlier held that the loan obtained by Ram Ekbal Singh and his son Arun Kumar Singh were on the basis of fake and false documents and directed the bank officials to take recourse to the DRT, Patna, the question of again entertaining the second application filed by the Bank by the District Administration is illegal, bad, contrary to the principles of natural justice and equity. Learned counsel has therefore, prayed for setting aside the order dated 22.02.2024. Learned counsel has stated that the petitioners are bona fide purchaser who after due verification only have purchased the subject property and their rights cannot be defeated on the basis of some fake documents which were used for mortgaging the subject property and obtaining the loan. Learned counsel has therefore, prayed this Hon'ble Court allow the CWJC and consequently quash the impugned order dated 22.02.2024.

5. Per contra, the learned counsel appearing on behalf of the respondent-Bank has vehemently opposed the very maintainability of the present writ petition and the prayer sought for. Learned counsel has stated that the petitioners on the very same cause of action had on an earlier occasion approached the DRT, Patna by way of SA No. 144 of 2022 and the said SA was dismissed by the DRT, Patna on 10.01.2024. That the order of the DRT, Patna has not been challenged by the petitioners till date and the same has become final. Further, it is stated that the petitioners have already filed a Title Suit No. 22 of 2024 before the Court of Sub-Judge-I, Katihar in respect of the very same subject property and they cannot file the present writ petition seeking the very same reliefs which are sought for in the title suit. That the petitioners without awaiting the result of the title suit filed by them have filed the present writ petition with a *mala fide* intention. Further, it is stated by the counsel that the subject property was already sold and sale-deed executed in favour of the authority purchaser (i.e., the Respondent No. 10 herein). Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition. The Learned counsel for the respondents has relied on the judgment of the Hon'ble Supreme Court in the case of ***Kanaiyalala Lal Chand Sachdev Vs. State of Maharashtra & Ors.*** reported in ***(2011) 2 SCC 782.***

6. Admittedly as seen from the record in the present case, the petitioner No. 2 herein has filed SA No. 144 of 2024 before the Debt Recovery Tribunal, Patna in respect of the very subject property challenging the SARFAESI proceedings initiated by the Indian Overseas Bank. The said SA was dismissed *vide* order dated 10.01.2024 wherein the DRT, Patna after going through the record has held as under;

> *"11. The application under Section 17 of the SARFAESI Act filed by Shailendra Ksumar Singh (SA No. 144 of 2022), with all pending IA if any is dismissed. No order for the costs. It is made clear that the applicant may pursue any remedy civil or criminal, legally available to him with respect to the alleged sale by the respondent No. 4 in favour of the applicant concealing the existing mortgage/ charge."*

7. The petitioners in their wisdom have thereafter, filed a Title Suit No. 22 of 2024 before the Sub-Judge-I, Katihar.

8. 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."

9. In this particular case also the subject property has been auctioned, the sale certificate issued in favour of the respondent No. 10 herein. The petitioners pursuant to the orders of the DRT, Patna in SA No. 144 of 2024 have approached the Civil Court by way of the title suit therefore, the present CWJC is misconceived. Further, it is to be noted that the question as to whether the mortgage made by the respondent Nos. 8 & 9 herein are on the basis of fake documents or not are all disputed questions of facts which cannot be gone into under Article 226 of the Constitution of India. The petitioners having approached the Civil Court by way of title suit have to necessarily await the outcome of the same, the question of entertaining the present writ petition at this juncture does not arise. The petitioners for reasons best known to them have not filed a statutory appeal against the order of the DRT, Patna dated 10.01.2024 passed in SA No. 144 of 2024.

10. Having regard to the law laid down by the Hon'ble Supreme Court in the above cited case, this Court is not inclined to entertain the present writ petition. The present writ petition is accordingly, dismissed however, without any cost.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2025.
Transmission Date	NA