IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22555 of 2018

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Anand Kumar S/o Late Tribhuwan Narayan Singh, resident of Village and P.O.- Saistapur, P.S.- Athmalgola, District- Patna at present residing in Dwarika Path, Mohalla- Mahatma Gandhi Nagar, P.S.- Agamkuan, Town and District- Patna- 800026.

... ... Petitioner/s

Versus

1. The Divisional Manager, Canara Bank Lav Kush Tower, Exhibition Road, Patna
2. The Sr. Branch Manager, Canara Bank, Sada Shivam, B- 51, Peoples Co-operative Colony, Kankarbagh, P.S. Kankarbagh, Town & District Patna
3. Prem Kumar, S/o Late Tribhuwan Narayan Singh.
4. Avinash Kumar, S/o Prem Kumar, residents of Village and P.O.- Saistapur, P.S.- Athmalgola, Distt.- Patna at present residing in Dwarika Path, Mohalla- Mahatma Gandhi Nagar, P.S.- Agamkuan, Town and District- Patna- 800026.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madan Prasad Singh No-2, Mr. Dharmendra Kumar Raju, Advocates
For the Respondent/s	:	Mr. Rajan Ghoshrave, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 21-08-2025

1. The writ petition is filed for the following reliefs:

> "(i) For issuance of writ of certiorari quashing the sale notice dt. 24.10.18, whereby 2 kathas (2722 sqft) consisting of Thana No.- 10, plot No.-294, khata no.-33, Tauzi No.- 468, ward no.-46, holding no.-299/64/2, circle Nagar, no.-50B, Bahadurpur, Mauza- M.G. Nagar District.-Patna has been put on auction

sale on 30.11.2018.

(ii) For issuance of a direction to respondent no.-1 and 2 to recover loan amount from respondents 3 and 4 by taking coercive steps against them.

(iii) For issuance of interim direction to the Bank to stay auction sale of the aforesaid property till the disposal of this application.

Or issue such appropriate writ/writes, direction directions or pass such other order /orders, which may be found just and proper.”

2. The case of the petitioner, in brief, is that the the land in question was purchased by his father, Late Tribhuwan Narayan Singh, under a registered sale deed dated 15.01.1979 in the name of his wife, Late Sita Devi (now deceased). Thereafter, a double-storeyed building was constructed on a significant portion of the land. It is further submitted that Late Tribhuwan Narayan Singh died on 24.05.2004, leaving behind his widow Sita Devi, two sons (Prem Kumar and Anand Kumar – the petitioner), and two daughters (Manju Devi and Rani Devi). Sita Devi passed away on

04.06.2017.

3. It is further submitted that in April 2018, a Bank staff visited the petitioner's residence with a letter dated 17.04.2018 addressed to Late Sita Devi, alleging non-regularization of a loan account despite repeated reminders. It is also submitted that a letter dated 08.06.2018 to Canara Bank stating that the loan of Rs. 11,00,000/- was taken by Avinash Kumar (son of Prem Kumar) for education, with Prem Kumar acting as a guarantor. It was contended that Prem Kumar fraudulently mortgaged the property standing in the name of his mother without the knowledge of other legal heirs, and requested that recovery be effected from Prem Kumar and Avinash Kumar.

4. The Learned counsel for the petitioner submitted that on 09.10.2018, a possession notice was affixed on the house demanding repayment of Rs. 18,02,792.94 within 60 days, with further direction not to deal with the property, which would remain subject to the charge of Canara Bank. It is contended that the petitioner also filed a

representation dated 25.10.2018 to the Divisional Manager (Respondent No. 1), emphasizing that Late Sita Devi was an elderly, semi-literate lady, and that the property was mortgaged without her consent. The petitioner and his two sisters hold shares in the property. It was argued that the Bank should have taken steps to recover the loan from the actual loanee and guarantor, rather than attempting to sell the property of a deceased person whose estate devolved upon the legal heirs.

5. The Learned counsel for the petitioner asserted that the property has been undervalued at Rs. 1,01,28,000/- whereas its actual market value exceeds Rs. 3 crores and the petitioner claims to have acquired legal rights and title over the property upon the death of his mother and therefore seeks protection from the proposed auction sale.

6. It is contended that the Bank should have taken coercive steps against Prem Kumar and Avinash Kumar for loan recovery, but instead they

opted for the easier course by auctioning the property of a deceased person.

7. Further, by way of supplementary affidavit, the Learned counsel for the petitioner submitted that the writ petition was affidavited on 19.11.2018 and could not be filed earlier as an alternative remedy in the form of an appeal under Section 17(1) of the SARFAESI Act was available and an application / appeal was filed before the DRT on 24.11.2018 (S.A. No. 219/18). However, since the Presiding Officer is not available, the appeal remains unheard, and no stay of auction sale could be granted, rendering the appeal ineffective.

8. The Learned counsel for the petitioner submitted that the auction was scheduled for 30.11.2018 and the property is his residential house. He also mentions filing a partition suit (T.P. Suit No. 350/2017) on 13.12.2017 against Prem Kumar for partition of ancestral property including the subject land and building. It is further submitted that after the death of Late Sita Devi,

Prem Kumar has been collecting rent from tenants, which was increased from Rs. 16,000/- to Rs. 20,000/- per month. It is further contended that the notice for repayment and the auction proceedings have been initiated in the name of the deceased Sita Devi, without issuing any notice to her legal heirs who have succeeded to the property.

9. Per contra, the Learned counsel for the respondent-Bank submitted that the petitioner is disputing the title of the mortgaged property, which was lawfully mortgaged by the owner, Sita Devi (guarantor), during her lifetime. As such, the Canara Bank has the first charge on the said mortgaged property. It was further submitted that the petitioner cannot dispute the title of the mortgaged property in the instant writ proceedings.

10. The respondent-Bank contended that the matter is purely a civil dispute between the Bank and its customer and does not warrant interference under Article 226 of the Constitution of India. The petitioner is at liberty to avail appropriate remedies before the competent civil forum, including appellate remedies under the Recovery of Debts and Bankruptcy Act.

11. Heard the Learned counsel for the petitioner as well as the Learned counsel for the Bank and perused the records.

12. Upon consideration of the records and rival contentions, it is evident that such directions as prayed for by the petiioner in the present writ petition cannot be given by this Court under Writ jurisdiction.

13. Further this is purely a civil dispute between the petitioner and the Bank. The petitioner has an alternative remedy either to challenge any order before the Debt Recovery Appellate Tribunal (DRAT), if any order has been passed by the Debt Recovery Tribunal (DRT), or to prefer a case before the DRT against the actions of the Bank.

14. In the case of **PHR Invent Educational Society v. UCO Bank and Others** (Civil Appeal No. 4845 of 2024), their Lordships of

the Apex Court have held as follows:

> *"Ordinarily the High Court would not entertain a petition u/Art. 226 if an effective remedy is available to the aggrieved person..."*

15. Likewise, in the matter of **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and Ors.,** reported in **(2024) 2 SCC 1**, their Lordships of the Apex Court have held as follows:-

> *"**97**. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act ..."*

16. In the case of **United Bank of India v. Satyawati Tondon and Ors.** reported in **(2010) 8 SCC 110**, their Lordships of the Apex Court have held as follows:-

> *"**43**. ... the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is*

available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions ...”

It is further held:-

“... the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

17. The Hon’ble Apex Court, in the aforesaid judgments, has categorically held that the High Courts cannot entertain a writ petition under Article 226 of the Constitution when an effective alternative remedy is available to the aggrieved person.

18. The writ petition is, accordingly, dismissed as not maintainable in light of the law laid down by the Hon’ble Supreme Court of India in the aforementioned judgments.

19. The petitioner may approach the appropriate forum in accordance with the law laid

down by the Hon'ble Supreme Court of India as stated supra.

20. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2025
Transmission Date	