IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.712 of 2025
In
Civil Writ Jurisdiction Case No.19306 of 2024

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Md. Ajim @ Md. Ajim Uddin, Son of Md. Ismail, Resident of Purani Bazar, Khaira Road, Jamui, Distict Jamui.

... ... Appellant

Versus

1. The State of Bihar through the Joint Secretary, Directorate of Institutional Finance (Finance Department), Govt. of Bihar, Patna.
2. The District Magistrate-cum-Collector, Jamui.
3. The Superintendent of Police, Jamui.
4. The Circle Officer, Jamui.
5. The Station House Officer, Jamui Police Station, Jamui.
6. The Chief Manager, Circle Shastra Centre, Punjab National Bank, Circle Office Ramchandrapur, Biharsharif.
7. The Authorized Officer, Punjab National Bank, Jamui Branch, District - Jamui.
8. The Manager, Punjab National Bank, Jamui Branch, Jamui.

... ... Respondents 1st Set

9. Gagan Kumar Son of Uma Shankar Prasad Gupta, Resident of Sikandra Bazar, PS Sikandra, District Jamui.

... ... Respondent 2nd Set/Writ Petitioner

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Appearance :

For the Appellant	:	Ms. Shrishti Singh, Advocate
		Mr. Pranav Kumar, Advocate
For the State	:	Mr. Asif Kalim, AC to AAG-12
For the PNB	:	Mr. Mritunjay Kumar, Advocate
For the Pvt. Resp	:	Mr. S.P. Parasar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-07-2025

Heard learned counsel for the appellant and learned counsel for the respondents 1st set and respondents 2nd set.

2. The appellant in this case is aggrieved by and dissatisfied with the judgment dated 09.07.2025 passed by the learned Writ Court in CWJC No. 19306 of 2024. By the impugned judgment, learned Writ Court refused to allow the intervention application being I.A. No. 01 of 2025 preferred by the applicant-appellant seeking to implead himself as party Respondent No. 9 in the writ petition and allowed the writ petition.

3. It appears on perusal of the records that Respondent No. 9 of the present appeal preferred the writ petition being CWJC No. 19306 of 2024 seeking the following reliefs:-

> "(i) For the issuance of appropriate writ or writs in the nature of mandamus directing and commanding the Respondents, especially Respondent Nos.-2 and 4 to hand over the physical and vacant possession of the auctioned and sold property situated at (a) Khata No. 53, Plot No. 461, Thana No. 41, Touzi No. 346, Ward No. 14 area 1.125 decimal, Mouza- Jamui, Pargana Gidhour, P.S. + Sub-Division + District Jamui Title Deed No. 10904 dated 14.12.2004 owner Md. Azimuddin vide Sale Certificate dated 31.07.2024, (b) Khata No. 53 Plot No. 468, Thana No. 41, Touzi No. 346, Ward No. 14, Hall Ward No. 23, area 288 Sqft. Mouza-Jamui Bazar- Purani Bazar, Khaira More se Mir Mas Jamui, Pargana Gidhour, P.S. + Sub-Division + District Jamui, Title Deed No. 312 dated 19.01.2011 owner Md. Azimuddin, son

of Late Sheikh Ismael, (c) Khata No. 53 Plot No. 468, Thana No. 41, Touzi No. 346, Ward No. 14, Hall Ward No. 23, area 288 Sqft. Mouza- Jamui Bazar- Purani Bazar, Khaira More se Mir Mas Jamui, Pargana Gidhour, P.S. + Sub-Division + District Jamui, Title Deed No. 1540 dated 03.03.2012 owner Md. Azimuddin, son of Late Sheikh Ismael, (d) Khata No. 8 Plot No. 244, Thana No. 41, Touzi No. 346, Ward No. 14, area 2.70 decimal Mouza- Jamui Pargana Gidhour, P.S. + Sub-Division + District Jamui, Title Deed No. 1409 dated 14.03.2005 owner Md. Azimuddin, son of Late Sheikh Ismael, all the said properties have been auctioned sold to the petitioner by the Authorized Officer, Circle Shastra Centre, Ramchandrapur, Punjab National Bank vide Sale Certificate dated 31.07.2024.

(ii) For the issuance of appropriate writ or writs in the nature of mandamus directing the Respondent No.-4 to comply the order passed by the Respondent No. 2 vide SARFAESI Case No. 01/2024 dated 20.08.2024 whereby and where under the said respondent no.-2 directed the respondent no.-4 to take necessary action and to handover the physical possession of the properties in question to the petitioner forthwith.

(iii) For issuance of direction upon the respondent authorities to pay compensation for withholding the huge amount of **Rs.1,42,25,000.00 (One Crore Forty-Two Lakhs Twenty-Five Thousand only)** since 24.07.2024 without any fault on the part of the petitioner as during the said period, the petitioner has suffered mental distress and agony as well as huge financial loss having detrimental effect upon other business of the petitioner as the Respondent without rhyme and reason has not handover the physical possession of aforesaid properties to the petitioner.

(iv) For any other relief/reliefs for which the petitioner is entitled in the eye of law."

Brief Facts of the Case

4. It is the case of the writ petitioner that pursuant to a sale notice issued by the Authorised Officer of the Punjab National Bank, Jamui Branch, Jamui, (hereinafter called 'Bank'), he participated in the auction sale of the secured assets conducted under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002'). The writ petitioner emerged as the highest bidder of all the three properties which were subject matter of sale. In this regard, he placed before this Court a copy of the intimation letter dated 16.07.2024 which is enclosed as Annexure 'P/1' to the writ application.

5. It is pointed out that pursuant to Annexure 'P/1' i.e. sale intimation letter, the petitioner paid the entire amount to the Bank through RTGS. The Bank duly accepted the entire payment.

The sale was confirmed. The confirmation of sale letter as contained in Annexure ‘P/3’ to the writ application has been placed before this Court.

6. The petitioner has further stated that as the Authorised Officer of the Bank apprehended the possible problem of law and order while taking physical possession of the property, he filed an application before the District Magistrate-cum-Collector, Jamui under Section 14 of the SARFAESI Act, 2002 which was numbered as SARFAESI Act Case No. 01/2024. The District Magistrate-cum-Collector, Jamui heard the parties and passed an order on 20.08.2004 (Annexure ‘P/5’) whereby he directed the Circle Officer, Jamui to ensure that the physical possession of the property is handed over to the Authorised Officer of the Bank.

7. The petitioner moved this Court, as according to him, despite the direction of the District Magistrate, Jamui, the Circle Officer did not act upon the same. It is stated that even the Authorised Officer of the Bank wrote a letter dated 13.09.2024 (Annexure ‘P/6’) to the Circle Officer, Jamui requesting him to take steps towards compliance of the order dated 20.08.2024 passed in SARFAESI Act Case No. 01/2024 but that was of no avail. Even after passing of a substantial period, when the petitioner found that the Circle Officer is not taking care of the orders and sitting tight over the matter, he approached this Court by filing the writ application. The petitioner contended that he is a bonafide purchaser of the property in question in the e-auction conducted by the Authorised Officer of the Bank and has shelled out the hard-earned money of Rs.1,42,25,000.00/- under bonafide belief that he would soon get physical possession of the property.

8. The petitioner contended before this Court that the SARFAESI Act, 2002 was enacted to provide a machinery for empowering banks and financial institutions so that they may have the power to take possession of secured assets and to sell them.

9. From the records, it appears that the learned Writ Court passed orders from time to time directing Respondent No. 4 to comply with the orders of the District Magistrate and file a report but when the report was not filed, the District Magistrate as well as the Circle Officer were asked to be present in the Court.

10. The borrower, who is the appellant before this Court, filed an interlocutory application being I.A. No. 01 of 2025. The Interlocutory Application was filed seeking to implead the borrower as party Respondent No. 9 in the writ petition. The borrower contended before the Writ Court that the physical possession of subject property is still with him, therefore, he was a necessary party to be impleaded and heard. The learned Writ Court was informed that the borrower had approached the Debt Recovery Tribunal, Patna (in short 'DRT') questioning the auction of the property and also the sale certificate issued in favour of the writ petitioner. A contention was made that the writ petition would not be maintainable at the instance of the auction purchaser.

11. The learned Writ Court found that the subject property which was mortgaged by the borrower with the respondent Bank has already been auctioned and sale certificate has been issued in favour of the writ petitioner. The writ petitioner was only seeking implementation of the order passed by the District Magistrate under Section 14 of the SARFAESI Act, 2002, therefore, the petitioner would not be a proper or necessary party to the present writ. The learned Writ Court was of the view that the only option available to the intervenor-petitioner was either to challenge the order passed by the District Magistrate under Section 14 of the SARFAESI Act, 2002 by way of a separate writ petition or approach DRT seeking stay of the implementation of the sale certificate issued in favour of the writ petitioner. In ultimate analysis, the learned Writ Court found that even if the application of the intervenor was allowed, no useful purpose would be achieved as no relief can be granted in favour of the intervenor-petitioner.

12. The plea on behalf of the intervenor-petitioner that the powers of this Court under Article 226 of the Constitution of India cannot be invoked as an executing court for implementing the order of the District Magistrate has been rejected by the learned Writ Court.

Submissions on behalf of the Appellant

13. In appeal before us, learned counsel for the appellant has contended that in this case, though a sale certificate was issued in favour of the auction purchaser but the sale was yet not completed. It is submitted that if the sale was yet not completed, the auction purchaser had no *locus standi* to move this Court under Article 226 of the Constitution of India seeking implementation of the order dated 20th August, 2024 passed by the District Magistrate under Section 14 of the SARFAESI Act, 2002. By placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **ITC Limited versus Blue Coast Hotels Limited and Others** reported in **(2018) 15 SCC 99** (paragraph '48'), learned counsel submits that in the said case, one of the questions which arose for consideration before the Hon'ble Supreme Court was as to whether creditor having taken a symbolic possession and auction sold the property remains a secured creditor. The Hon'ble Supreme Court held that the transfer of secured assets by the creditor cannot be said to be a complete transfer as contemplated under Section 8 of the Transfer of Property Act. The creditor had still right to actual possession of the secured assets, therefore, it must be held that the creditor remained a secured creditor even after the limited transfer to the auction purchaser under the agreement.

14. Learned counsel submits that the learned Writ Court has erred in entertaining the writ application at the instance of the auction purchaser. In fact, the submission of learned counsel is that neither the secured creditor nor the auction purchaser could have invoked the writ jurisdiction of this Court for implementation of the order dated 20th August, 2024 passed by the District Magistrate.

15. It is submitted that the borrower has approached the DRT against the order dated 20th August, 2024 and the auction purchaser, if so advised, would have only remedy to file an application under Section 17 of the SARFAESI Act, 2002 before the DRT for implementation of the order of the District Magistrate.

<u>Submissions on behalf of the Respondents</u>

16. On the other hand, learned counsel for the Bank as well as learned counsel for the auction purchaser have jointly contended that the submissions made on behalf of the intervenor-applicant/appellant are thoroughly misconceived. The writ petitioner has invested a sum of Rs.1,42,25,000.00/- and has got a confirmed sale certificate of the auction properties. Despite the order of the District Magistrate in terms of the statutory scheme of the SARFAESI Act, 2002 if the Circle Officer was sitting idle and was not implementing the order, the auction purchaser cannot be expected to remain a fence sitter and see how the game is being played between the borrower and the Authorised Officer of the Bank.

17. Learned counsel further submits that even going by paragraph '48' of the judgment of the Hon'ble Supreme Court in the case of **ITC Limited** (supra), it would be crystal clear that the secured creditor had made at least limited transfer to the auction purchaser. This would be evident from the confirmation of sale. If this was the position and the writ petitioner being beneficiary of the order of the District Magistrate was suffering, he rightly invoked the extraordinary writ jurisdiction of this Court seeking direction to the Bank as well as the District Magistrate and the Circle Officer to act in accordance with the statutory scheme and implement the order.

18. It is submitted that the borrower did not respond to the notice under Sub-Section (2) of Section 13 of the SARFAESI Act, 2002. He remained sitting idle when the symbolic possession of the property was taken and sale notice dated 03.06.2024 was issued. Learned counsel submits that the borrower had a cause of action to challenge the symbolic possession and the sale notice which were the measures taken by the Bank under sub-Section (4) of Section 13 of the SARFAESI Act, 2002. In fact, the Bank being the secured creditor took symbolic possession of the property and had conducted the auction sale without there being any legal impediment. It is only when the District Magistrate passed order under Section 14 of the SARFAESI Act, 2002, the borrower moved before the DRT challenging the order dated 20.08.2024 but in the said proceeding, he did not implead the auction purchaser until 04.07.2025. This being the position, there being no stay on the implementation of the order of the District Magistrate, the learned Writ Court has rightly issued directions to the Statutory Authority under the SARFAESI Act, 2002 and such directions are within the framework of the Statute.

19. At this stage, this Court called upon learned counsel for the appellant to confirm as to whether the borrower had ever challenged the action taken by the Authorised Officer of the Bank under Section 13(4) of the SARFAESI Act, 2002, the answer is that the borrower has not challenged the action of the Bank either at the stage of taking symbolic possession of the property or at the time of sale of the property. The contention is that the auction purchaser has challenged the order under Section 14 of the SARFAESI Act, 2002 which takes within its compass the action under Section 13(4), therefore, if the borrower succeeds in the application brought before DRT against Section 14 order, all the previous steps taken by the Bank would automatically go.

<u>Consideration</u>

20. Having heard learned counsel for the parties and on going through the records, we find that on the point of service of Section 13(2) notice, while learned counsel for the appellant has contended that in the I.A. filed by the intervenor-appellant, he had stated that no notice was served upon the appellant, learned counsel for the Bank submits that the said notice was duly served and it may be found from the averments made in paragraph '5.3' of the SARFAESI Application of the appellant, the fact is that the appellant has not questioned service of notice under sub-Section (2) of Section 13. In fact, there is an admission that the Bank issued demand notice under Section 13(2) of SARFAESI Act, 2002 on 08.02.2024 and in the demand notice, the Bank allowed the applicant to reply within 60 days, thereafter, it is stated in paragraph '5.4' that the applicant personally visited the Branch and requested the Bank to give the details of his account so that he could scrutinise the same and make payments.

21. We have perused the SARFAESI application, copy of which has been provided by learned counsel for the appellant and find that the submission of learned counsel for the Bank is correct.

The Bank being a secured creditor had a security interest over the properties in question. The Bank invoked its power under the scheme of the SARFAESI Act, 2002 by issuing a notice under Section 13(2) of the SARFAESI Act, 2002. It is evident that Section 13(2) notice which is also known as a demand notice was not responded to, by the borrower.

22. This Court further finds that when the Authorised Officer of the Bank took action under Section 13(4) of the SARFAESI Act, 2002 by taking symbolic possession of the property and then by issuing a sale notice dated 03.06.2024, the borrower did not challenge the same. The cause of action was there to the borrower but no application under Section 17 of the SARFAESI Act, 2002 was filed challenging the measures taken by the Bank under Section 13(4) of the SARFAESI Act, 2002.

23. In the aforementioned background, the application was filed by the secured creditor before the District Magistrate under Section 14 of the SARFAESI Act, 2002 in which the borrower was also heard and thereafter, the order dated 20.08.2024 was passed.

24. Since the Circle Officer was not acting on the direction of the District Magistrate in terms of the order under Section 14 of the SARFAESI Act, 2002, the auction purchaser moved this Court seeking the directions recorded herinabove.

25. In our opinion, in this world of commercial exigencies, the sanctity of the action taken under the provisions of the SARFAESI Act, 2002 is required to be maintained as far as it confirms the statutory proceeding. The auction purchaser being beneficiary of the order under Section 14 cannot be expected to remain sitting idle and just curse his fate as to why he invested so much money in purchase of the property. In this case, the auction purchaser moved this Court only when he found that nothing was happening and despite parting with a sum of Rs.1,42,25,000.00/- (Rupees One Crore Forty Two Lakhs Twenty Five Thousand/-), he was not getting the possession of the property.

26. In our considered opinion, in such circumstances, if the auction purchaser, who has got at least limited transfer in terms of the judgment of the Hon'ble Supreme Court in the case of **ITC Limited** (supra), invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, he cannot be ousted on the ground of *locus standi.* The writ jurisdiction of this Court is a plenary jurisdiction and in appropriate cases where it is found that the authorities under the statute are not implementing the scheme of the statute, this Court may at the instance of the auction purchaser issue appropriate writ. Thus, the plea of *locus standi* of the auction purchaser is outrightly rejected.

27. The contention of the learned counsel for the appellant that neither the secured creditor nor the auction purchaser could have invoked this Court, in our considered opinion, has no basis to stand and we reject it outrightly.

28. This Court has been informed that against the order dated 20.08.2024 passed by the District Magistrate, the borrower has moved before the DRT. If it is so, we refrain from making any comment with respect to the said proceeding. It is open for the appellant to pursue his remedy, if any, available to him.

29. We find no reason to interfere with the judgment of the learned Writ Court.

30. This Appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2025
Transmission Date	