

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12938 of 2023

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M/s K.K Enterprises through its Proprietor Nitin Kumar, Male, aged about 47 years, Son of Mr. Naresh Kumar Singh, Resident of Sipara N.H. 83, Patna Gaya Road, Patna - 800020.

... .. Petitioner/s

Versus

1. Indian Overseas Bank having its Head Office at 763, Anna Salai, Chennari-600002, its Regional Office at H- 23, Doctors Colony, Kankarbagh, Patna - 800020 through its authorized officer.
2. Siemens Construction Corporation, through its partner Rakesh Ranjan, B- 9, Abhiyanta Nagar, Patna - 800025.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Ranjan
For the Respondent/s : Mr.Sheela Sharma

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

Date : 30-01-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“(i) For a writ of certiorari to quash the order dated 04.07.2023 passed in Regular Appeal Case No. 16 of 2022 by Chairman, Debt Recovery Appellate Tribunal, Allahabad whereby the appeal preferred by the Respondent Bank has been allowed and the order dated 25.09.2019 passed in S.A. No. 90 of 2018 by the Debts Recovery Tribunal, Patna has been set aside without assigning any cogent reason and the case has been remanded back to the Learned Presiding Officer, Debts Recovery Tribunal, Patna as a matter of course and without any justification when entire evidence was available on record which was sufficient to decide the appeal on merit and directing the Tribunal to re-appreciate the available evidence for mere asking is unwarranted as the order of remand merely



elongates the life of litigation without serving the cause of justice and thus the impugned order passed by the Appellate Authority is arbitrary, illegal and unjustified.

(ii) For a direction that during the pendency of the writ petition, the S.A. No. 90 of 2018 on revival after order of remand may be stayed.

(iii) For any other relief/ reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”

3. The brief facts necessary for adjudicating the present writ petition are that the petitioner herein has approached the DRT, Patna by way of S.A. No. 90 of 2018 challenging the initiation of proceedings under the SARFAESI Act, 2002. It is the contention of the petitioner that the lands which are subject matter of the mortgage are agricultural lands and, therefore, the initiation of the SARFAESI proceedings is contrary to the well settled principles of law and also the provisions of the SARFAESI Act.

4. Learned counsel appearing on behalf of the petitioner has stated that the DRAT, Allahabad has erroneously set aside the order passed by the DRT, Patna dated 25.09.2019 contrary to the well settled principles of law and the various judgments rendered by the Hon'ble Supreme Court as well as the other High Courts. Learned counsel has stated that the DRAT, Allahabad ought not to have interfered with the order of the DRT, Patna dated 25.09.2019 as the necessary material was there before the DRAT, Allahabad to decide the issue once and for all. That instead of remanding the



matter back to the DRT, Patna the DRAT, Allahabad ought to have gone through the records and given its findings. Learned counsel has relied on the judgments passed by the Hon'ble Supreme Court in the case of *Nadakerappa Since Deceased by Lrs. & Ors. Vs. Pillamma Since Deceased By Lrs. & Ors.* reported in 2022 *LiveLaw (SC) 332*, *Arvind Kumar Jaiswal (D) Thr. Lr. Vs. Devendra Prasad Jaiswal Varun, Sirajudheen Vs. Zeenath & Ors.* reported in 2023 *LiveLaw (SC) 145*, *K. Sreedhar Vs. M/s Raus Constructions Pvt. Ltd. & Ors.* reported in 2022 *LiveLaw (SC) 13*, *Indian Bank Vs. K. Pappireddiyar* reported in *AIR 2018 Supreme Court 3540*, *Sunil Kumar Roy Vs. M/s. Bhowra Kankanee Collieries Ltd.* reported in 1971 *AIR 751* and the judgments passed by the Hon'ble Andra Pradesh High Court in the case of *State Bank of India Vs. S.B. Shah Ali (Died) & others* reported in *AIR 1995 AP 134* to buttress his case.

5. *Per contra*, the learned counsel appearing on behalf of respondent has vehemently opposed the very maintainability of the present writ petition. It is stated that the DRAT, Allahabad having found that the DRT, Patna has passed the order impugned before it without verification of the revenue record and the documents to show that the land mortgaged is not agricultural land has rightly set aside the same and remanded the matter back to the DRT, Patna



for deciding the same. Learned counsel has relied on the judgment of this Hon'ble Court passed in CWJC No. 1146 of 2016 dated 16.07.2024 in support of his contentions. Learned counsel has stated that the order of the DRAT, Allahabad is in consonance with the well settled principles of law and the same does not require any interference by this Court and prayed for dismissal of the present writ petition.

6. Though both the counsel have vehemently argued at length on the merits of the case, this Court is not inclined to go into the same and render any opinion about the documents filed. Having regard to the fact that any comment made by this Court would prejudice the DRT, Patna where the matter is remanded for fresh consideration. Though the counsel for the petitioner has vehemently argued that the DRAT, Allahabad ought not to have remanded the matter back to the DRT, Patna for adjudication afresh, the fact remains that the DRAT, Allahabad while going through the records and the order of DRT, Patna has found that the necessary documents which could establish the fact as to whether the mortgaged land are agricultural land or not have not been looked into by the DRT, Patna. Though the counsel for the petitioner has tried to impress this Court that necessary documents were available before the DRAT, Allahabad and also before this



Court and the said issue can be decided by this Court also, this Court adjudicating under Article 226 of the Constitution of India is not inclined to do as this is a serious dispute with regard to the facts and the documents relied by the petitioner. The respondents counsel has vehemently opposed the genuity of the documents filed by the petitioner. Further, it is to be noted that the DRAT, Allahabad has only remanded the matter back to the DRT, Patna and directed it to take into consideration the documents filed by both the petitioner as well as the respondents therein and render its finding. This Court is of the opinion that no prejudice could be caused either to the petitioner or respondents herein by the said order. This Court sitting under Article 226 of the Constitution of India cannot go into the disputed questions of fact more particularly, when the petitioner and the respondents are at logger heads with regard to the documents filed by the respective sides. Unless and until the parties lead cogent and convincing evidence and get the documents marked before the competent Court in this particular case, the DRT, Patna, the validity or genuity of the documents relied cannot be gone into.

7. Having regard to the same, this Court is not inclined to entertain the present writ petition. This Court is of the *prima facie* opinion that the order passed by the DRAT, Allahabad is a



well reasoned order which does not require any interference by this Court. The writ petition is accordingly disposed of directing the DRT, Patna to consider the evidence (both oral and documentary) filed by both the parties and decide the matter on merits strictly in accordance with law.

8. Having regard to the fact that the SARFAESI proceedings are pending since 2018 year, the DRT, Patna is directed to dispose of the S.A. No. 90 of 2018 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

9. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.05.2025.
Transmission Date	NA

