IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16882 of 2022

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Kamlesh Kumar S/o Pramod Prasad Sahu R/o- Village- Rasulpur Sayed Salem, PS- Ahiyapur, Anchal- Mushahri, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. Authorized Officer/Chief Manager, Canara Bank, Circle Office Luv Kush Tower, Exhibition Road, Patna Bihar- 800001.
2. Branch Manager, Canara Bank, B.S.E.B. Ramdayalu Branch, Muzaffarpur, Bihar 852201.
3. Rakesh Kumar, S/o Ramekbal Ram Village- Harpur, P.O.- Giddha, District-Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mrityunjay Kumar
For the Respondent/s : Mr.Rajan Ghoshrave

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 11-08-2025

Re:- I.A. No. 01 of 2023

For the reasons stated in the Interlocutory Application, it is allowed.

2. Registry is directed to make necessary changes.

3. Heard the learned counsel for the parties.

4. This writ petition has been filed for the following relief(s):-

> *"I. For issuance of a writ in the nature of MANDAMUS directing the Respondent Bank to open the seal of the only dwelling house of the Petitioner and allow them to occupy the said residential premises.*
>
> *II. Issue a Direction/ order setting*

aside the Respondent's action of taking physical possession of the petitioner's only dwelling house and other valuable items lying in the said premises and restore the physical possession of the immovable property in question to the petitioner.

III. For issuance of a writ in the nature of MANDAMUS allowing the present petition and call for the relevant records and proceedings in respect of the Sale Notice dated 14.09.2022 issued by the Respondent Bank to the petitioner under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002 read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, wherein immovable property bearing Khata No.- 113, Khesra No.- 165, Area-04 Decimal, situated at Rasoolpur Sayed Salem, PS- Ahiyapur, Thana No.- 662, Anchal- Mushari, District- Muzaffarpur has been e-auctioned.

IV. For issuance of direction to the Respondent Bank to consider the proposal of the petitioner for immediate payment of 25% of the sale amount in lieu of unlocking the premises."

5. It is the case of the petitioner that the respondent bank without following the guidelines issued by the Reserve Bank of India or loan standard operating procedures have put the loan account of the petitioner under the NPA thereafter the

authorities have taken action under the SARFAESI proceedings.

6. Learned counsel for the petitioner states that the subsequent action of the respondent bank after putting the loan account of the petitioner in NPA are bad and therefore liable to be set aside. Learned counsel has relied on the following judgments to buttress his case:

(i) (1977) 2 Supreme Court Cases 724 (STATE OF U.P. AND OTHERS vs. M/s. INDIAN HUME PIPE CO. LTD.)

(ii) (2000) 10 Supreme Court Cases 482 (UNION OF INDIA AND ANOTHER vs. STATE OF HARYANA AND ANOTHER)

7. Per contra, the learned counsel appearing on behalf of the respondents Bank has stated that the auction of the subject property was done on 20.10.2022 and the Respondent No. 3 was the highest bidder and he has deposited all the entire amount sale. That the bank thereafter has issued a letter to the petitioner informing him that the auction was successfully conducted and the sale certificate has already been issued. Further, it is stated that the physical possession of the subject property was handed over to the Respondent No. 3 on 18.11.2022. Learned counsel has relied on the judgment of the Hon’ble Supreme Court reported in ***(2024) 2 SCC 1***

(CELIRLLP V. BAFNA MOTORS (MUMBAI) PVT LTD & ORS).

8. Admittedly, in the present writ petition the property has been auctioned the sale certificate issued and the physical possession of the subject property has already given to the Respondent No. 3.

9. The ***Hon'ble Supreme Court*** in ***(2024) 2 SCC 1 (CELIRLLP V. BAFNA MOTORS (MUMBAI) PVT LTD & ORS)*** 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.

10. That in so far as the citations relied by the petitioner are concerned, there is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court, it is an accepted fact that the alternate remedy is not a bar for entertaining any writ petition under article 226 of the Constitution of India. However, it is to be noted that the judgments relied by the counsel for the petitioner are under the various enactments other than SARFAESI Act.

11. The Hon'ble Supreme Court in above cited case i.e. ***(2024) 2 SCC 1 (CELIRLLP V. BAFNA MOTORS (MUMBAI) PVT LTD & ORS***) was rendered under the SARFAESI Act and it has been categorically held that once the

sale certificate is issued to the highest bidder, the only remedy available to the aggrieved party is to approach the Debts Recovery Tribunal.

12. Having regard to the above mentioned facts and circumstances, this Court does not find any merit in the present writ petition which warrants any interference, the writ petition is accordingly dismissed. However, liberty is granted to the petitioner to approach the Debts Recovery Tribunal if he is so advised challenging the sale notice and the sale. It is clarified that this Court has not gone into the merits of the case and leaving all issues to be agitated by the petitioner and to be dealt with by the Debts Recovery Tribunal in accordance with law. If any application for condoning the delay in approaching the DRT is filed, the same shall be considered in accordance with law.

13. With the above directions, the present writ petition stands dismissed.

(A. Abhishek Reddy, J)

Gauravkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.08.2025
Transmission Date	N/A