IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18499 of 2023

CNR No. BRHC011237442023

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Mrs. Aarti Devi Wife of Mr. Shyam Kumar Verm,a Resident of Naya Bazar Sansar Pokhar New Bypass Road Pachna Road Pribazar, Distsrict Lakhisarai, Proprietor M/s Shyam Trading

... ... Petitioner/s

Versus

1. The Canara Bank through the Managing Director 6648 112 JC Road Halsurpete, Nagarathpete, Bengaluru, Karnataka, 560001.
2. The Zonal Manager, Canara Bank , 3rd Floor Luv Khush Tower P.B. No. 195 Braj Kishore Path Budh Vihar, Salimpur Ahra Patan-01.
3. The Authorized Officer, Canara Bank, Gaya.
4. The regional Manager, Canara Bank, Recovery Section, Gaya.
5. The Branch Manager, Canara Bank, Gaya.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mukesh Kumar, Advocate
For the Respondent/s : M/s Sumit Kumar Singh,
Anmol Kumar
Kumar Vikram
Raushan Kumar
Vivek Kumar, Advocates
Abhilasha Kumari, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 29-10-2026

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

> "I) For issuance of an appropriate writ/writs in the nature of mandamus, commanding and directing the respondents to quash and set aside Possession Notice U/S 13(4) of Securitisation and Reconstruction of

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Financial Assets and Enforcement of Security Interest Act herein referred to SARFAESI Act dated 14.09.2023 and covering letter dated 30.10.2023 issued by the respondent Authorised Officer, Canara Bank Gaya by which the respondent has proposed to sale the mortgage properties.

II) Further for a direction to the respondent to quash the notice U/S 13(2) of SARFAESI Act dated 11.04.2023 contained in Ref. GAYARO/ RECOV/ 3288/ SHYAMTD/2023 by which the petitioner was directed to pay rupees 6234681 in A/C No. 3288261000026, rupees 733644 in A/C No. 32887555000036, rupees 84789 in A/C No. 3288746000003, 472603 in A/C No. 170001584740 and rupees 52183 in A/C No. 181009465453. After taking loan aforesaid the petitioner started business but all of sudden on 04.03.2020 fire broke out in his godown catch fire for that F.I.R was lodged his business closed, in which he got rupees 30 lakhs and consulted the Bank for settlement of loan but the respondent Bank took whole amount and further issued their loan showing dues and in the meantime pandemic covid-19 came.

The petitioner is ready to settle

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the dispute with Bank, if the respondent waive interest amount and fix easy instalment.

For any other relief/ reliefs for which the petitioner is entitled to get."

2. The brief facts culled out of the Writ petition are that the petitioner, a businesswoman, obtained a loan from Canara Bank, Lakhisarai Branch, by mortgaging her property to establish her business. She claims that her business suffered losses, after her godown was destroyed by fire on 20.03.2020. The petitioner alleges that the Bank initiated proceedings under Sections 13(2) and 13(4) of the SARFAESI Act, 2002, and issued a sale notice dated 30.10.2023 without duly serving the requisite notices upon her.

3. The Learned counsel for the petitioner submits that the Bank initiated the proceedings without proper service of the statutory notices and without considering the circumstances affecting the petitioner's business. It is further submitted that the petitioner is willing to repay the loan and

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to settle the dues. The Learned counsel, therefore, prays for appropriate relief against the impugned proceedings and for an opportunity to settle the loan account.

4. A supplementary affidavit has been filed on behalf of the petitioner. The Learned counsel for the petitioner submits that, pursuant to the order dated 19.02.2024, the petitioner has expressed her willingness to repay the outstanding loan amount. However, she disputes the Bank’s calculation, contending that certain payments have not been properly adjusted. The Learned counsel for the petitioner further submits that the petitioner has suffered substantial losses, due to the destruction of her godown by fire and seeks six months’ time for settling the dues. Accordingly, a direction is sought for the Bank to reconcile the loan account, determine the outstanding amount and permit repayment in instalments, without taking coercive steps during the said period.

5. The Learned counsel for the petitioner has placed reliance upon the judgment dated

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10.09.2020 passed in **CWJC No. 2503 of 2020 (Rajani Ranjan Sahu Vs. Canara Bank & Ors.)** and an order dated 10.03.2022 passed in **CWJC No. 3602 of 2022 (Anmol Kumar Vs. Authorized Officer, Union Bank of India & Ors.**).

6. A counter affidavit as well as a supplementary counter affidavit have been filed on behalf of the respondent Bank. The Learned counsel for the respondent Bank submits that the petitioner availed various credit facilities aggregating to Rs. 68.10 lakh, but failed to maintain regular repayment, resulting in classification of the loan accounts as Non-Performing Assets (NPA) on 10.04.2023. It is further submitted that the Bank issued a demand notice dated 11.04.2023 under Section 13(2) of the SARFAESI Act, 2002, followed by a possession notice dated 27.07.2023 under Section 13(4) of the Act. The Learned counsel for the Bank contends that the statutory notices were duly served upon the petitioner, by Speed Post and was published in

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the local newspapers; hence, the allegation of violation of the principles of natural justice is misconceived.

7. The Learned counsel for the Bank further submits that the total outstanding dues of the petitioner stood at Rs. 66,01,795.51 as on 31.01.2024 and that the petitioner’s claim regarding non-adjustment of payments is denied by the Bank. It is also submitted that the petitioner has an alternative statutory remedy under the SARFAESI Act, 2002. Further, the Bank is required to recover the outstanding dues in accordance with its applicable guidelines. Accordingly, the Learned counsel for the Bank prays for dismissal of the Writ petition.

8. In support of the case of the respondent Bank, the Learned counsel for the respondent have placed reliance upon the judgment dated 22.09.2026 passed by this Court in CWJC No. 9826 of 2023 (Ashish Kumar Vs. THe Authorized Officer, Canara Ban & anr). In the said judgment, this Court took note of the observations made by the Hon’ble

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Supreme Court in **(1) State Bank of Travancore Versus Mathew K.C.** reported in **(2018) 3 SCC 85, (2) United Bank of India Vs. Satyawati Tondon & others** reported in **(2010) 8 SCC 110, (3) Phr Invent Education Society Vs. UCO Bank and others** reported in **(2024) 6 SCC 5179, (4) Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Others.** reported in **(2011) 2 SCC 782, (5) Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd.** reported in **2024 2 SCC 1, (6) Kotak Mahindra Bank Limited Vs. Girnar Corrugators Pvt. Ltd.** reported in **(2023) 3 SCC 210 and (7) Shakeena Vs. Bank of India & others.** reported in **2019 INSC 922.** In view of the law laid down by the Hon'ble Supreme Court India in the aforesaid decisions, this Court dismissed the Writ petition.

9. Heard the Learned counsel for the petitioner as well the Learned counsel for the Bank of India and perused the records.

10. This Court on 05.12.2024 has passed the order, which reads as follows:

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"Learned counsel for the petitioner states that the authorities have issued the notice dated 28.11.2024 asking the petitioner to vacate the residential premises by tomorrow i.e., 06.12.2024. Learned counsel states that the petitioner has suffered huge losses in the business due to a fire accident and, therefore, the petitioner could not pay the installments due to the Bank. Learned counsel on instructions states that the petitioner is willing to settle the entire loan account with the bank provided some installments are given. Learned counsel prays this Court to stay the notice dated 28.11.2024.

2. Learned counsel for the respondent-Bank opposes the prayer sought by the petitioner and states that the petitioner has not paid a single rupee to the credit of the loan account from the February, 2024 on wards. Counsel seeks time for replying to the I.A. No. 01 of 2024.

3. Having regard to above submissions, there shall be interim stay of dispossession of the petitioner from the subject premises subject to the petitioner depositing an amount of Rs. 15 Lakhs to the credit of the loan account within a period of fifteen days from today. In case the petitioner does not comply with the directions of this Court, the authorities are free to take possession of the subject

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property. It is also clarified that in case the petitioner is desirous of settling the loan account, he can approach the Bank authorities seeking payment of the balance loan amount in installments or for extending any OTS scheme and the same shall be considered by the Bank on its own merits."

11. Further this Court has also passed order on 21.01.2025, which reads as under:

"Learned Counsel appearing on behalf of the petitioner-State that pursuant to the order dated 05.12.2024 passed by this Court, the petitioner deposited an amount of Rs. 15 lakhs but with some delay. Learned Counsel has stated that the petitioner could not deposit the amount of Rs. 15 lakhs within the time stipulated by this Court, for reasons beyond his control, however, subsequently he has deposited Rs. 15 lakhs. Learned Counsel has further stated that the Bank-authorities have locked the dwelling unit of the petitioner and the petitioner is rendered homeless.

2. Learned Counsel appearing on behalf of the Bank has stated that the petitioner had deposited an amount of Rs. 15 lakhs but with some delay and has not rebutted the other contentions made by the petitioner.

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3. Having regard to the averments of petition and also taking into account that the subject property is a dwelling unit, the authorities are directed to unlock the premises and permit the petitioner to stay in the premises, within one week from today. It is further ordered that the petitioner shall approach the Bank immediately with a proposal to clear the outstanding amounts within three weeks from today. On Such proposal be given, the Bank shall consider the same."

12. Further, this Court on 27.03.2025 has passed the following order :

"Learned counsel appearing on behalf of the Respondent-Bank seeks time for complying with the direction given by this Court on 21.01.2025. Learned counsel has stated that though the Bank has filed LPA No. 95 of 2025 before this Hon’ble Court against the order dated 21.01.2025, the same was dismissed on 04.03.2025. Thereafter, SLP filed by the Respondent-Bank also was not entertained by the Hon’ble Supreme Court.

2. Having regard to the same, the authority shall comply with the direction of this Court dated 21.01.2025 positively by the next date of hearing."

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13. Furthermore, the Division Bench of this Court in **L.P.A. No. 95 of 2025 (The Canara Bank and ORs. Vs. Mrs. Aarti Devi)** passed order dated 04.03.2025, which reads as under:

> "2. The order dated 21.01.2025 passed in CWJC No. 18499 of 2023 is under challenge in the present appeal.
>
> 3. It appears that a SARFAESI proceeding was initiated against the respondent and his mortgaged house was taken possession of. However, the Court had directed the respondent to pay upfront an amount of Rs. 15 lakhs and a suggested plan of liquidating the loan, till which time, the Bank was directed to restrain itself from taking possession of the mortgaged property.
>
> 4. Rs. 15 lakhs was deposited by the respondent, but belatedly. In the meantime, the Bank had taken possession of the premises in question amounting to total eviction and ouster of the respondent.
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> 5. This was again challenged by the respondent vide CWJC No. 18499 of 2023, wherein a Single Judge of this Court directed the appellant-Bank to restore the possession of the respondent within a week from the date of passing of the

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order i.e. from 21.01.2025 and the respondent was directed to approach the Bank immediately with a proposal to clear the outstanding amount within three weeks from that date.

6. The learned counsel for the respondent agrees that till date the premises have not been unlocked and he is still shelterless.

7. Mr. Rajan Ghoshrave, the learned counsel for the appellant-Bank, submits that no sooner the respondent shall contact the Bank office, the premises in question would be unlocked, but with the condition that within a period of 15 days, a schedule would be produced by the respondent with respect to liquidation of the loan amount.

8. The order dated 21.01.2025 be complied with in the first instance, whereafter the rest of the issues shall be taken up for consideration in this appeal.

9. This order ought not to be understood as any decision on the merits of the case of either the appellant or the respondent.

10. The respondent shall also, by the next date, file an affidavit enclosing a copy of the plan which he shall submit before the Bank with respect to liquidation of loan."

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14. Against the aforesaid order, the Canara Bank filed **Special Leave to Appeal (C) No. 8015 of 2025** before Hon'ble Supreme Court of India, which has been disposed of vide order dated 24.03.2025, which reads as follows :

> "We are not inclined to entertain the present special leave petition. We leave it open to the petitioner to raise the question of maintainability of the writ petition before the Division Bench/writ Court. The plea, if raised, will be decided as per law.
>
> Further, the petitioner will be at liberty to move an appropriate application before the Division Bench of the High Court, stating that unlocking of the doors would not mean that the possession of the premises has been given back to the respondents. If any such application is filed, the same will be dealt with in accordance with law.
>
> Recording the aforesaid, special leave petition is disposed of.
>
> We, however, give liberty to the respondents to approach this Court for recall of this order, if required and necessary.
>
> Pending application(s), if any, shall stand disposed of."

15. Later, the Division Bench of this Court in LPA No. 95 of 2025 (The Canara Bank and ORs.

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Vs. Mrs. Aarti Devi) has passed order dated 13.10.2025, which reads as follows:

> "The appellants have preferred present LPA dated 21.01.2025 passed in CWJC No. 18499 of 2023. It is in the nature of interim order.
>
> 2. Learned counsel for the appellants submitted that appellants had preferred Special Leave to Appeal (C) No. 8015 of 2025 in identical matter against the order dated 04.03.2025 in LPA No. 95 of 2025 passed by the co-ordinate Bench of this Court in which the following observations have been made:-
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> > “We are not inclined to entertain the present special leave petition. We leave it open to the petitioner to raise the question of maintainability of the writ petition before the Division Bench/writ Court. The plea, if raised, will be decided as per law.
> >
> > Further, the petitioner will be at liberty to move an appropriate application before the Division Bench of the High Court, stating that unlocking of the doors would not mean that the possession of the premises has been given back to the respondents. If any such application is filed, the same will be dealt with in

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accordance with law.

Recording the aforesaid, the special leave petition is disposed of.

We, however, give liberty to the respondents to approach this Court for recall of this order, if required and necessary.

Pending application(s), if any, shall stand disposed of.”

3. Perusal of the order of the Hon’ble Supreme Court is related to maintainability of writ petition is to be decided before the division bench/writ court. Whereas, this Court identical matters are decided by the learned Single Judge, hence, the present LPA is against interim order passed in CWJC No. 18499 of 2023 dated 21.01.2025. In the light of the observation made by the Hon’ble Supreme Court on 24.03.2025 in the aforementioned cited order, the appellants have a remedy before the learned Single Judge in view of the administrative allotment of cases/roster to the extent that learned Single Judge has been allotted the subject matter of deciding CWJC.

4. In the light of these facts and circumstances, the present LPA is against the interim order, hence, we proposed to disposed of the present LPA with a request to the learned Single Judge to decide the CWJC No. 18499 of 2023 at the earliest in the light of Hon’ble Supreme Court observation. Till

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deciding CWJC No. 18499 of 2023 on merit, order dated 21.01.2025 passed in CWJC No. 18499 of 2023 shall not be given effect to.

5. Accordingly, the present LPA No. 95 of 2025 stands disposed of."

16. The petitioner has challenged the action taken by the respondent-Bank under the provisions of the SARFAESI Act, 2002, particularly in relation to the proposed sale the mortgaged properties. The respondents have raised a preliminary objection regarding the maintainability of the Writ petition on the ground that the petitioner has an efficacious alternative statutory remedy under the SARFAESI Act.

17. In the case of **State Bank of Travancore** (supra) the Hon'ble Supreme Court has held as follows:

"**15.** It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly

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discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tondon* [*United Bank of India* v. *Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , has also not been kept in mind before passing the impugned interim order: (SCC pp. 123-24, para 46)

> "*46*. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for

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recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] , *Whirlpool Corpn.* v. *Registrar of Trade Marks* [*Whirlpool Corpn.* v. *Registrar of Trade Marks*, (1998) 8 SCC 1] and

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Harbanslal Sahnia v. *Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia* v. *Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

16. The Writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the Writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd.* v. *Prem Heavy Engg. Works (P) Ltd.* [*Dwarikesh Sugar Industries Ltd.* v. *Prem Heavy Engg. Works (P) Ltd.*, (1997) 6 SCC 450] ,

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observing: (SCC p. 463, para 32)

"*32*. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.

18. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.

19. All questions of law and fact remain open for consideration in any application by the aggrieved before the statutory forum under the SARFAESI Act."

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18. In the case of **PHR Invent Educational Society Vs 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..."*

19. Likewise, in the matter of **Celir LLP Vs 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 ..."*

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

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> *"**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."*

21. The Hon'ble Apex Court, in the aforesaid judgments, has categorically held that the High Court ordinarily should not entertain a Writ petition under Article 226 of the Constitution where an effective statutory alternative remedy is available to the aggrieved person.

22. Accordingly, without expressing any opinion on the merits of the petitioner's claim, the

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present Writ petition is dismissed in view of the law laid down by the Hon’ble Supreme Court of India in the aforesaid judgments. However, the petitioner shall be at liberty to avail the appropriate statutory remedy available to him in accordance with law.

23. Pending application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2026
Transmission Date	

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