**(2007) 11 PAT CK 0091**

**In the Patna High Court**

**Case No :** CWJC No. 5276 of 2007

M/s Astha Enterprises — APPELLANT

Vs

The State Bank of India and Others — RESPONDENT

**Date of Decision :** 07-11-2007

**Acts Referred:**

**Citation :** (2008) 1 PLJR 572

**Hon'ble Judges :** Navaniti Pd. Singh, J

**Bench :** Single Bench

## Judgement

Navaniti Pd. Singh, J.—The petitioner had certain banking accommodation from the State Bank of India, Shri Krishnapuri, Sahdeo Mahto Marg Branch, Patna. It had for the accommodation received offer of certain security in the shape of mortgage of removal property. One of the properties, so mortgaged, did not belong to the petitioner but belong to some one else who had consented to the mortgagee. A part of the said property, as it now appears, was sold by the owner to another person i.e. one Prakash Chandra Yadav of Munger. This started the dispute between the bank and the petitioner, which has ultimately led to the bank threatening closure of accounts and making proceedings for recovery. In my view, the whole problem is with regard to proper security. Petitioner had offered another security. Learned counsel for the bank does not dispute the same but says that full documentation with regard to specifically offered security was not completed. Apparently, there is nothing on record to show that the petitioner was directed to make up deficiency which the petitioner neglected. Therefore, in sum and substance, what actually remains was a proper security to be offered. The petitioner undertakes that if the bank informs the formalities yet remaining to be completed he will complete those formalities immediately to the best of his ability.

2. In my view, that should satisfy the bank, if all formalities are completed.

3. Learned counsel for the bank also agrees that if the petitioner is able to put up the some security in proper form the bank would then have no further grievance

so long as their dues are secured.

4. In relation to the property, which was sold to the Prakash Chandra Yadav I may only mention that the law is clear that if a property is mortgaged and subsequently sold and purchased by any person the property remains mortgaged with the bank. The mortgage is not extinguished and the bank would have all rights over the said property as originally it possesses.

5. So far as releasing the said property from mortgage is concerned, that would be a matter to be decided by the bank keeping in view its commercial and financial interest and in case of default by the petitioner the bank would be at liberty to move against the security including the said security if it is not released prior.

6. In that view of the matter, this Writ petition is being disposed of with the direction as aforesaid and consequently restraining the bank from seeking enforcement of liquidation of the debt if petitioner is able to complete the formality of securing the debts. Other grievances of the petitioner with regard to wrong charging of interest etc., the petitioner would be advised to make a detailed representation to the concerned authority of the bank, who would be obliged to consider the same and pass an appropriate order thereon and communicate the same to the petitioner. In this the petitioner may also be permitted to appear before the authority to sort out the problem, so that this dispute does not linger on any longer. The writ petition stands disposed of.

 