

(2021) 12 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18381, 18436 Of 2021

Poonam Mishra

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Security Interest (Enforcement) Rules, 2002 — Section 8(6)

Citation : (2021) 12 PAT CK 0043

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Ajay Kumar Sinha, Om Prakash Singh, Rakesh Kumar Singh, Dr. K. N. Singh, Abhay Kumar Thakur, Dr. K N Singh

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

In CWJC No.18381 of 2021 petitioners have prayed for following reliefs:-

"(i) Issuance of writ or writ in the name of certiorari quashing / setting aside the E- Auction Sale Notice dt. 21.09.2021 (Annexure -8) whereby and whereunder date of Auction of the dwelling house has been fixed on 25.10.2021 in an arbitrary and illegal manner and in complete violation of the Act as well as the rule.

(ii) Issuance of Writ in the nature of mandamus directing the respondents to stop the sale proceeding of the Dwelling House of the petitioners and not to proceed with the Auction Sale of the Dwelling house of the petitioners till the final disposal of the writ petition or till the final outcome of the statutory appeal filed before the learned DRT, Patna vide Diary No.834 of 2021.

(iii) For issuance of direction to stay the process of the Sale Notice under Rule 8(6) of the SARFAESI Rule vide his letter bearing Ref-SARB/051176/2021-22/SK/839 dt. 21.09.2021 (Annexure -8) issued by Respondent No.4 by which the

date of Auction sale has been fixed on 25.10.2021 till the final adjudication of the present writ petition or till the final outcome of the Statutory Appeal filed before the learned DRT, Patna vide Diary No.-834 of 2021 as the learned Forum are vacant.

(iv) Issuance of writ in the nature of mandamus directing the respondents not to confirm the Auction Sale even if it is done on 25.10.2021 till the final outcome of the writ petition.

(v) Issuance of such other order/orders, direction/directions, relief/reliefs to which the petitioner may found entitled to be passed as your Lordships may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

In CWJC No.18436 of 2021 petitioners have prayed for following reliefs:-

"(i) For staying the operation of letter dated 31.12.2020 & letter dated 28.01.2021 issued by the authorized officer of the Canar Bank.

(ii) For staying the judgment passed by the presiding officer in OA No.448 of 2017 dated 09.01.2019.

(iii) For direction upon the respondents for nto creating third party right with respect to the property mortgaged with the bank.

(iv) For supply of the decreetal amount finally and fully calculated in the light of order dated 09.01.2019 passed by the learned Presiding Officer in OA No.448 of 2017.

(v) For during the period of vacation and non-availability of Hon'ble Court of the Presiding Officer in DRT at Patna the respondents be restrained to take any coercive action against the petitioner."

Dr. K. N. Singh, learned Additional Solicitor General, invites our attention to the notification dated 13th of December, 2021, whereby Presiding Officer, Debt Recovery Tribunal, Ranchi has been given charge of Debt Recovery Tribunal, Patna and now the Tribunal is functional.

Learned counsel for the petitioners states that within next two weeks, they shall be moving an application seeking for early hearing for interim protection in the proceeding already initiated before the appropriate forum.

Let the needful be done within two weeks.

Till then, interim order dated 28.10.2021 passed in CWJC No.18381 of 2021 titled as Smt. Poonam Mishra Versus the State Bank of India & Ors. shall continue to remain in operation, whereafter, it shall automatically stand vacated.

Petitions stand disposed of in the aforesaid terms. Interlocutory application, if any, shall also stand disposed of.