(2020) 10 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7379 Of 2020

Ranjan Kumar Singh APPELLANT

Vs

Bank Of Baroda And Ors RESPONDENT

Date of Decision : 05-10-2020

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13, 13(4), 14, 17
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 10 PAT CK 0025

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Sanjeev Ranjan

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sanjeev Ranjan, learned Advocate for the petitioner.

2. The present writ petition has been preferred against the order passed by the District Magistrate, Purnea on 12.08.2020, whereby he has exercised his powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the Act) and has directed for taking of physical possession of the mortgaged property, which is the house of the petitioner.

3. Learned counsel for the petitioner submits that before such an order was passed under Section 14 of the Act, the petitioner ought to have been noticed.

4. It appears from the records that the petitioner made timely payment of the loan amount till 2018 and the major part of the loan had already been paid. Despite this, the Bank proceeded under Section 13(4) of the Act. However, it does not appear from the pleadings of this petition whether the petitioner objected/responded to the notice issued by the Bank.

5. In any view of the matter, the learned counsel for the petitioner submits that

he is ready to make good the payment, provided he is not dispossessed from the house in question, which is his residential house.

6. The proposition suggested by the petitioner that he is required to be noticed, is based on a decision of the Allahabad High Court.

7. Section 14 of the Act is very clear and there is practically no such provision in the Act to notice the borrower against the request of the secured creditor. All that the authority under Section 14 of the Act is required to see whether the rules/procedure prescribed under Section 13 of the Act and affidavit which has been filed by the secured creditor contains all the relevant facts.

8. Apart from this, the prayer made by the petitioner is not acceptable for the reason that he has an alternative remedy by way of an appeal under Section 17 of the Act before the Debt Recovery Tribunal.

9. True it is that not in all cases, existence of an alternative remedy would be a complete bar to exercise of jurisdiction under Article 226/227 of the Constitution of India, but prudence demands, especially in these fiscal matters that the alternative remedy ought to be exhausted first.

10. Mr. Sanjeev Ranjan, learned Advocate for the petitioner has drawn the attention of this Court to a Full Bench decision of this Court in which, it has been expressed that considering the Pandemic situation, any coercive action shall be taken as a last resort.

11. Regard being had to the submission advanced on behalf of the petitioner that he is ready to make good the loan as well as the interest within a stipulated time, this Court only makes an observation that in case such a request is made by the petitioner before the Bank concerned, that would be considered in its proper perspective and necessary decision shall be taken by the Bank.

12. If any appeal is preferred against the order of the District Magistrate, which has been impugned in the present petition, the Debt Recovery Tribunal shall also consider this aspect of the matter and shall pass necessary orders in accordance with law, showing to some urgent dispatch in the matter as the petitioner is likely to be dispossessed from his residential house.

13. With the aforesaid observation/direction, the writ petition stands disposed off.