(2016) 12 JH CK 0055

In the Jharkhand High Court

Case No : W.P.(C) No. 6811 of 2016

Udyami Awaslya Sahakari Lohanchal Complex Samity Ltd. APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 280

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Pratyush Kumar, Advocate, for the Respondents; Mr. Krishna Murari, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the petitioner and the Respondent Bank.

2. Petitioner has approached this Court against the possession notice published in the daily newspaper, "Prabhat Khabar" on 4.8.2016(Annexure-3) issued by the Respondent no.3 where under the property appertaining to Plot no. 1-C/48 Bokaro Industrial Area, Khata no. 243, Survey Plot no. 4637(P) has been sought to be put on auction by the Respondent no.3 for default in payment of outstanding industrial loan amounting to Rs. 5,80,60,227.06 extended in favour of third party namely M/s. Industrial Chemical Mineral Company for which Respondent No.4 had mortgaged the said property as a guarantor.

3. Learned counsel for the petitioner has contended that petitioner is a society, which has been allotted the piece of land for residential purpose vide lease deed dated 26.9.1992. After due scrutiny of the request made by the members of the Society, different plots have been allotted to different members for residential purpose including Respondent no.4 with specific terms and conditions contained in the agreement that the lessor and the lessee will not assign, mortgage, under-

let or sell or part with the possession over the land without the previous consent of the lessor. However, the Respondent no.4 in complete breach of the said agreement, has mortgaged the piece of land allotted to him by way of guarantee to the third party and in default of payment of outstanding dues, the said property is sought to be auction sold. Petitioner is therefore, directly and substantially aggrieved by the impugned action.

4. Learned counsel for the Respondent Bank submits that petitioner has alternative statutory remedy under Section 17 of the SARFAESI Act, 2002, though he may not be a borrower. Further in the light of the ratio laid down by the Apex Court in the judgment rendered in the case of United Bank of India v. Satyawati Tandon & others reported in 2010 (8) SCC 110, this Court should refrain from exercising its discretionary jurisdiction in the matter.

5. Learned counsel for the petitioner however submits that auction sale is likely to be held on 22nd December, 2016. This fact however is not corroborated from the pleadings or enclosed documents.

6. Having considered the submission of the parties in the light of aforesaid facts, this Court for the present is inclined to relegate the petitioner to approach appropriate Forum available under the SARFAESI Act, 2002 against the impugned action of the Respondent Bank in terms of Section 17 thereto. In case the petitioner files such an appeal within a period of 2 days, learned Presiding Officer, Debts Recovery Tribunal would consider their application for any interim protection on or before 22.12.2016, if satisfied with the exigency of the matter, in accordance with law and after due opportunity to the Respondent Bank as well.

7. The writ petition is disposed of with the aforesaid observations.

