IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2503 of 2020

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Rajani Ranjan Sahu Son of Late Mukut Prasad Sahu Ex-Member of Parliament (R.S.), Flat No.504, Nav Sansad Vihar, Plot No.4, Sector-22, Dwarka, New Delhi- 110077.

... ... Petitioner/s

Versus

1. Canara Bank Exhibition Road, Patna- 800001, through its Chief Manager.
2. The Chief Manager, Authorized Officer, Canara Bank, Exhibition Road, Patna.
3. M/s Ashok Auto Enterprises Pvt. Ltd., through its Director Neelam Sahu, Wife of Sri Prabhat Sahu, Resident of 197-B, S.K. Puri, Patna, Registered Office at Exhibition Road, P.S. Gandhi Maidan, District- Patna.
4. Mrs. Suman Parva Wife of Sri Madhup Kumar Singh Resident of B-4-103, P.R.D.A., S.K. Puri, Patna- 800001.
5. The District Magistrate & Collector, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Nikhil Kumar Agrawal Aditi Hansaria, Advocates
For the Respondent/s	:	Mr. Rajan Ghoshrave, Advcoate Sanjay Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 10-09-2026

I.A. No. 1 of 2020:

1. I.A. No. 1 of 2020 is filed to amend the prayer portion at paragraph 1 of the Writ petition due to the subsequent developments as paragraph (b), (c) (d) and (e) .

2. Accordingly, I.A. No. 1 of 2020 is hereby allowed, amending the prayer portion. The reliefs mentioned in paragraph No. 8 thereof would form part

of the Writ petition.

C.W.J.C. No. 2503 of 2020

3. The petitioner has filed the instant application for the following reliefs:

> *"(a). for issuance of Writ in the nature of Writ of certiorari or any other appropriate directions, Writ/Writs, direction/ order/orders to quash the entire sale action of respondent Canara Bank including notice dated 16.02.2015 under Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, sale certificate dated 14.12.2015 and prohibit the Bank from handing over or interfering with the petitioner's flat and for further relief/reliefs as may be admissible and found find fit by this Hon' ble Court.*
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> "(b) For that forceful possession and eviction of inmates of the petitioner's flat by the respondent Bank with the help of local administration in a bid to get collusive sale concluded to be illegal and not sustainable in the eyes of law.
>
> (c) For that the Bank has malafide proceeded to get the sale concluded to over reach judicial scrutiny and after filing of the Writ petition.
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> (d) The following may be added as party respondent:
>
> (i) District Magistrate & Collector, Patna.

(e) The following prayer may be added to the Writ petition:

It is, therefore, prayed that your Lordships may graciously be pleased to issue Rule NISI calling upon the respondents to show cause (a) as to why possession of petitioner's flat is not restored immediately and petitioner duly compensated for the loss as well as mental agony suffered by him at by this advance age and (b) as to why the respondents or persons responsible for such misdemeanor is not punished and after hearing the parties and considering the show cause, if any, be further pleased to make the Rule absolute and grant the relief sought for:

4. The brief facts culled out of the Writ petition are that the petitioner had stood guarantor for the loan granted by the respondent-Bank to M/s Ashok Auto Enterprises Pvt. Ltd. and had offered his 2000 sq. ft. flat situated at S.P. Verma Road, Patna, as security. Subsequently, the loan was restructured and fresh accommodation was sanctioned by the Bank on 10.11.2011/ and communicated vide order dated 11.02.2012, but the petitioner did not renew or extend his guarantee. It is the petitioner's case that, thereafter, there were substantial variations in the loan

arrangement without his knowledge or consent, whereby he stood discharged from his liability as guarantor.

5. The petitioner further asserts that, despite such discharge, the respondent-Bank proceeded under the SARFAESI Act and sold his flat in the year 2015. According to the petitioner, no statutory notice under Section 13(2) or possession notice was duly served upon him. It is also alleged that the property, valued at Rs.71.30 lakh in 2011, was subsequently sold for only Rs.28.60 lakh against a reserve price of Rs.27.60 lakh. The petitioner also challenges the sale on the ground that the successful bidder did not deposit the required 15% of the sale consideration within the prescribed time and that the delay was illegally condoned by the Bank.

6. The Learned counsel for the petitioner submits that the petitioner stood discharged from his liability as guarantor on account of material variation and restructuring of the loan without his consent. Therefore, the respondent-Bank had no authority to proceed against the petitioner's property under the SARFAESI Act. It is further submitted that the sale is vitiated for non-service of mandatory statutory notices,

violation of principles of natural justice, gross undervaluation of the property and non-compliance with the requirement regarding deposit of the sale consideration. On these grounds, the Learned counsel seeks appropriate relief against the impugned action of the respondent-Bank.

7. A counter affidavit was filed on behalf of the respondent CANARA Bank. The Learned counsel for the respondent-Bank, on the other hand, submits that the petitioner was never discharged from his liability under the guarantee merely because the loan account was subsequently rescheduled or fresh guarantees were obtained from other persons. It is submitted that the petitioner's liability continued in terms of the guarantee agreement executed by him and there was neither any request by the petitioner for discharge nor any communication by the Bank releasing him from such liability.

8. It is further submitted that the petitioner's property was revalued on 06.07.2015 by a registered valuer and, owing to the prevailing market conditions, its value was lower than the valuation made in 2011. The allegation of undervaluation is, therefore, denied.

9. The Learned counsel further submits that

the Bank proceeded against the secured property in accordance with the provisions of the SARFAESI Act and, after following the prescribed procedure, sold the property and issued the sale certificate dated 14.12.2015 in favour of the auction purchaser. It is contended that there is no violation of the provisions of the SARFAESI Act or the principles of natural justice.

10. Lastly, the Learned counsel submits that the Writ is not maintainable in view of the efficacious alternative remedy available to the petitioner under the SARFAESI Act and, therefore, the Writ petition is liable to be dismissed.

11. A counter affidavit was filed on behalf of the respondent No. 4. The Learned counsel for respondent No. 4 submits that the Writ petition is highly belated and has been filed several years after issuance of the sale certificate dated 14.12.2015 and after possession of the property had already been handed over to respondent No. 4. It is submitted that the petitioner had knowledge of the auction and sale of the property and has approached this Court only when the Bank subsequently sought recovery of the outstanding dues from him.

12. The Learned counsel further submits that

the petitioner has suppressed material facts, particularly the earlier proceedings initiated by the borrower and another guarantor, which were dismissed by this Court, and the subsequent proceedings before the Debt Recovery Tribunal. According to the Learned counsel, the present Writ is only an attempt to reopen the issues relating to the auction sale and to obstruct the recovery proceedings.

13. It is further submitted that respondent No. 4 is a bona fide auction purchaser and had purchased the property in an open auction conducted by the Bank. The allegation of collusion or fraud is wholly baseless. The valuation of the property was based on the prevailing market value/MVR at the relevant time, and respondent No. 4 had no role in fixing the reserve price or conducting the auction.

14. The Learned counsel also submits that the alleged non-deposit of 15% of the sale consideration, if any, is a matter between the Bank and the auction purchaser and cannot, by itself, be used by the petitioner to challenge the sale, particularly when the Bank accepted the payment and issued the sale certificate. It is further submitted that the petitioner cannot take advantage of his age or visual impairment

to challenge a transaction after an unexplained delay.

15. Lastly, the Learned counsel submits that respondent No. 4 is already in possession of the property and has inducted a tenant therein. Since the sale has already been completed and possession delivered, no effective relief as sought in the Writ petition can now be granted. The Writ petition is, therefore, liable to be dismissed with costs.

16. A rejoinder to the counter affidavit filed on behalf of respondent Canara Bank was filed by the petitioner. The Learned counsel for the petitioner, in reply, submits that the Bank has not specifically answered the petitioner's case regarding the fresh sanctions granted to the principal debtor without obtaining any fresh guarantee from the petitioner. It is submitted that after the original guarantee, fresh/additional financial facilities were sanctioned on 11.02.2012 and again on 10.04.2013 on revised terms, and the latter sanction specifically contemplated guarantees of persons other than the petitioner. The petitioner, therefore, submits that his liability could not have been extended to such subsequent facilities.

17. The Learned counsel for the petitioner further submits that the Bank's explanation regarding

the fall in the value of the petitioner's property is wholly unconvincing. It is pointed out that, whereas the value of the petitioner's property was substantially reduced for fixing the reserve price, the valuation of another secured property of the principal debtor's husband was substantially increased during the same period. According to the Learned counsel, this comparative valuation casts serious doubt on the manner in which the reserve price of the petitioner's property was fixed.

18. It is next submitted that the terms of the e-auction notice required the successful bidder to deposit 25% of the bid amount, inclusive of the EMD, immediately upon acceptance of the bid. Against the bid of Rs.28.60 lakh, respondent No. 4 was thus required to deposit Rs.7.15 lakh immediately, whereas only Rs.3 lakh had been deposited. The balance amount was admittedly paid later. The Learned counsel submits that instead of taking action in accordance with the auction terms, the Bank permitted the delayed payment, which further supports the petitioner's allegation regarding the manner in which the sale was conducted.

19. The Learned counsel for the respondent-Bank, by way of supplementary submissions, reiterates

that the Writ petition is not maintainable in view of the statutory and efficacious remedy available to the petitioner under the SARFAESI Act against the measures taken by the Bank.

20. It is further submitted by the Learned counsel for the respondent Bank that the petitioner was not discharged from his contractual liability as guarantor merely because the loan was rescheduled or fresh guarantees were obtained from other persons. The Bank asserts that it never released the petitioner from his guarantee liability.

21. As regards the valuation, the Learned counsel for the respondent Bank submits that the property was an old and weak structure and was revalued on 06.07.2015 by a registered valuer. Its lower valuation in 2015, as compared to the valuation made in 2011, was attributable to the condition of the property and the prevailing market conditions.

22. The Learned counsel for the respondent Bank further submits that the Bank had duly complied with the provisions of the SARFAESI Act and that the petitioner was aware of the recovery proceedings. It is pointed out that the auction took place in 2015, whereas the present Writ was filed after about five

years. In the meantime, the borrower and another guarantor had already approached this Court and thereafter the Debt Recovery Tribunal, Patna, where their securitisation applications are pending.

23. It is, therefore, submitted by the Learned counsel for the respondent Bank that entertaining the present Writ may affect the pending proceedings before the Debt Recovery Tribunal and that the petitioner ought to be relegated to the statutory remedy available under the SARFAESI Act. On these grounds, the Learned counsel seeks dismissal of the Writ petition.

24. A rejoinder to the supplementary counter affidavit of respondent Bank was filed on behalf of the petitioner. The Learned counsel for the petitioner submits that the supplementary counter affidavit does not specifically answer the petitioner's principal grievance regarding non-service of the statutory notices and violation of the principles of natural justice.

25. It is further submitted that the Bank's explanation regarding the valuation of the property is not supported by any convincing material. The petitioner relies upon the substantial difference between the earlier valuation and the reserve price fixed in 2015 and submits that the manner in which the

valuation was reduced requires scrutiny.

26. The Learned counsel for the petitioner further submits that the Bank's own communication to the District Magistrate seeking possession proceeded on the basis that the petitioner's property was security for the loan of Rs.75 lakh sanctioned in 2011, although, according to the petitioner, he had not guaranteed the said subsequent loan. This, according to the petitioner, raises a serious question regarding the authority of the Bank to proceed against his property.

27. It is also submitted by the Learned counsel for the petitioner that the Bank permitted the auction purchaser to make the required deposit belatedly, despite the terms of the auction and the statutory requirement, and thereafter obtained possession of the property through the District Magistrate. According to the Learned counsel, these circumstances, coupled with the alleged suppression and inconsistent stand of the Bank, prima facie require investigation.

28. The Learned counsel for the petitioner, therefore, submits that the case involves more than a mere disputed valuation or recovery proceeding and warrants exercise of the Writ jurisdiction of this Court, including appropriate inquiry into the alleged

irregularities in the sale.

29. A rejoinder to the supplementary counter affidavit of respondent No. 4 was filed on behalf of the petitioner. The Learned counsel for the petitioner submits that the allegation of delay and suppression made by respondent No. 4 is misconceived. According to the petitioner, he approached this Court promptly after acquiring knowledge of the sale, and possession of the flat was taken through the State authorities only thereafter, on 28.01.2020. The petitioner has accordingly sought restoration of possession by way of the pending interlocutory application.

30. The Learned counsel for the petitioner further submits that respondent No. 4 cannot claim to be a bona fide purchaser unaffected by the alleged irregularities in the auction, particularly when she was the sole bidder and the Bank accepted the balance sale consideration after the time prescribed in the auction notice had expired. It is submitted that against the bid of Rs.28.60 lakh, 25% of the bid amount was required to be deposited immediately, but only Rs.3 lakh had been deposited initially and the balance was accepted later by the Bank.

31. It is also submitted by the Learned counsel

for the petitioner that the documents relied upon by the petitioner disclose that the Bank sought possession from the District Magistrate by stating that the petitioner was guarantor for the loan of Rs.75 lakh, which fact is specifically disputed by the petitioner. According to the Learned counsel for the petitioner, this circumstance further supports the petitioner's contention that the sale and subsequent possession were founded on an erroneous and unauthorized action of the Bank.

32. The Learned counsel for the petitioner, therefore, submits that the objections of respondent No. 4 regarding delay, possession and bona fide purchase do not answer the material irregularities alleged by the petitioner and that the relief sought in the Writ petition, including restoration of possession, deserves consideration.

33. A supplementary counter affidavit was again filed on behalf of the respondent Bank. The Learned counsel for the respondent-Bank, while referring to the averments made in the counter affidavit and supplementary counter affidavit, submitted that the allegations levelled by the petitioner are bald, misleading, misconceived and baseless. It was

contended that the proceedings initiated by the Bank under the provisions of the SARFAESI Act, 2002 were lawful and in accordance with the prescribed procedure.

34. It was further submitted by the Learned counsel for the respondent-Bank that the petitioner has suppressed material facts and has incorrectly alleged that he was neither a guarantor nor liable in respect of the loan account of the principal debtor. According to the Bank, the action taken against the secured asset, including issuance of notice, taking over possession and subsequent sale, was undertaken in exercise of the powers available to the Bank under the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002.

35. The Learned counsel for the respondent-Bank further submitted that the allegations of collusion, fraud, mala fide exercise of power and undervaluation of the property are wholly unfounded and have not been substantiated by any cogent material. The allegation that the property was deliberately sold at a throwaway price or that the auction purchaser and the Bank acted in collusion was also denied.

36. It was also submitted by the Learned counsel for the respondent-Bank that the petitioner cannot seek restoration of possession or challenge the

measures taken under the SARFAESI Act by way of the present Writ petition, particularly when the statute provides an efficacious alternative remedy against such measures.

37. With regard to the alleged non-payment of 25% of the bid amount by the auction purchaser, the Bank disputed the petitioner's interpretation of the relevant provisions and maintained that the sale was not rendered invalid on the grounds alleged by the petitioner.

38. The Learned counsel accordingly submitted that the Writ petition, as well as the interlocutory application seeking restoration of possession, lack merit and are liable to be dismissed.

39. Having considered the rival submissions and perused the materials available on record, this Court finds substance in the contention of the petitioner.

40. The documents produced by the Bank itself disclose that the loan was sanctioned on 10.11.2011, whereas Annexure-5 records the date of sanction as "11.02.2012". Significantly, the said document refers to the continuation of the equitable mortgage of the flat in question and, in the particulars of collateral securities,

the property which is the subject matter of the present proceeding has been shown as collateral security. The document also refers to the earlier loan of 2009. However, the Bank has not placed on record any fresh guarantee executed by the petitioner in respect of the subsequent financial accommodation sanctioned on revised terms.

41. The stand of the Bank that the petitioner continued to remain liable merely because he had not sought his discharge does not, in the facts of the present case, satisfactorily answer the specific contention of the petitioner that the subsequent financial facilities were sanctioned on materially altered terms without his consent with regards to the liability of a guarantor being founded upon the terms of the guarantee, the Bank was required to demonstrate that the petitioner's guarantee continued to cover the subsequent accommodation against which the disputed property was proceeded against. The mere mentioning of the particulars of guarantor/co-obligant in Form NF-589, Annexure-R/1, does not by itself establish that the petitioner had consented to or guaranteed the subsequent enhanced/restructured facilities.

42. It is further significant that the Bank has

relied upon the disputed property as security for the subsequent loan facility, while the petitioner specifically disputes having stood guarantor for such subsequent facility. In the absence of any cogent document evidencing the petitioner's consent to the altered financial arrangement or extending his guarantee to the subsequent facility, the action of the Bank in enforcing the security against the petitioner's property cannot be sustained merely on the basis of the original guarantee.

43. The Court also finds that the manner in which the sale proceedings were conducted gives rise to serious infirmities. The petitioner has specifically demonstrated that, against the auction bid of Rs.28.60 lakh, the amount required to be deposited towards 25% of the sale consideration was Rs.7.15 lakh, whereas only Rs.3 lakh was initially deposited and the balance was accepted subsequently. The Bank has not satisfactorily explained the acceptance of the delayed payment in the face of the terms governing the auction. This circumstance assumes significance when considered along with the petitioner's allegation regarding the substantially reduced valuation of the property and the reserve price fixed in 2015.

44. The Court is also unable to overlook the

petitioner's specific grievance regarding non-service of the statutory notices and the consequential denial of an effective opportunity, to object to the proposed measures against his property. Where the very authority of the secured creditor to proceed against the particular secured asset is disputed and the material on record does not satisfactorily establish the petitioner's continuing consent to the subsequent financial facility, strict compliance with the statutory procedure becomes all the more necessary.

45. The plea of availability of an alternative remedy cannot, in the facts of the present case, by itself operate as an absolute bar to exercise of Writ jurisdiction, particularly when the petitioner has raised questions concerning the jurisdiction and foundational authority of the Bank to proceed against his property, coupled with allegations of violation of mandatory statutory requirements and material irregularities in the auction process.

46. The subsequent possession of the property by respondent No.4 or issuance of the sale certificate cannot, by itself, validate a sale if the foundational action of the secured creditor is found to be unsustainable or the mandatory procedure prescribed

by law has not been followed. The rights claimed by the auction purchaser are consequently subject to the validity of the underlying SARFAESI proceedings. Auction purchasers amounts have to be refunded back to him by the respondent Bank.

47. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the respondent-Bank has failed to satisfactorily establish the petitioner's continuing liability in respect of the subsequent financial accommodation against which the disputed property was proceeded against and has also failed to dispel the material irregularities pointed out by the petitioner in the sale proceedings. The impugned measures taken against the petitioner's property, including the sale certificate dated 14.12.2015, therefore, cannot be sustained.

48. Accordingly, the Writ petition is allowed. The impugned sale proceedings in respect of the petitioner's property and the consequential sale certificate dated 14.12.2015 are hereby quashed. The respondent-Bank shall take consequential steps in accordance with law. The petitioner shall be entitled to restoration of possession, subject to such consequential directions as may be necessary for giving effect to this

order.

49. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2026
Transmission Date	