

DEBTS RECOVERY TRIBUNAL PATNA

Presiding Officer :Shri Kaushalendra Yadav

SA- 151 of 2024

1. Subh Narayan Mishra, Son of Late Pankhi Mishra, Resident of Raghubanshi Nagar, Ward No 35, Danapur Cantt., P.S. – Danapur, District - Patna.

.....Applicant/Borrower

Versus

1. The Authorized Officer cum the Chief Manager, Bihar Gramin Bank, Kankarbagh, Ram Jaipal Nagar, Patna.
2. Bholu Ram, S/o Tukru Ram, R/o Flat No.302, Urmila Place, Ram Jaipal Road, Danapur, Patna.

--respondents

Present:

- For the Applicant : Sh. Vitesh Kr. Singh, Advocate
For the respondent Bank : Sh. Manoranjan Kr. Mishra, Advocate
For the Respondent No.2 : Sh. Arvind Amar, Advocate

Dated: 01.07.2026

JUDGMENT

1. Present application u/s 17 of SARFAESI Act has been filed with a prayer to quash entire SARFAESI action taken against the properties of applicant alongwith the possession notice.
2. The brief facts of the case are that the applicant and one Meena devi availed overdraft Facility and Term Loan facility from the respondent bank. On default in repayment of the dues of the bank, the account of the applicant was declared as NPA on 31.07.2023. Subsequently, the bank initiated SARFAESI Action against the borrowers and issued demand notice u/s 13(2) dated 23.08.2023

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calling upon the applicant to make the payment of Rs.52,73,628.75. Further, the respondent Bank issued Possession Notice dated 29.11.2023 u/s 13(4) of the SARFAESI Act. Subsequently, the respondent bank moved before District Administration for assistance towards physical possession of the property. Accordingly, the District Administration vide order dated 15.03.2024 fixed the date as 20.03.2024 for physical possession of the secured asset. Aggrieved from the action of physical possession, the applicant filed this SA.

3. It is submitted by the Ld. Counsel of applicant that the respondent bank without serving demand notice, directly served the Possession Notice vide which applicant came to know that the account of the applicant has been declared as NPA on 31.07.2023. No details of the dues have been provided to the applicant. The possession notice has also not been published in two leading newspapers. The physical possession of the property has also been taken on 20.03.2024 without preparing inventory and punchnama of the movable items. The property in question has also not been registered with CERSAI as required under section 26D of the Act.
4. It is further submitted that during pendency of present application, the respondent bank issued auction sale notice dated 03.12.2024 and the same was published in newspaper on 11.12.2024. Without serving the same to the applicant, auction sold the property on 13.01.2025 to the respondent no.2, auction purchaser on very low price and also issued sale certificate in favour of auction purchaser on 18.03.2025.
5. On the contrary, ld. Counsel of the respondent bank submits that the account of the borrower was classified as NPA on 31.07.2023 due to default in repayment of dues of the bank. Further, in order to recover its outstanding dues, the respondent bank initiated SARFAESI Action against borrower and guarantor by issuing

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Demand Notice dated 23.08.2023 under section 13(2) of the Act and the same was sent to the borrower as well as co-borrower through registered post on 24.08.2023. Despite service of demand notice, the borrowers failed to repay the dues of the bank hence, the respondent bank proceeded further and took possession of the property by issuing Possession Notice dated 29.11.2023 and affixing the same on the secured asset. Further, the possession notice was sent to the applicant on 02.12.2023 through a registered post. Apart from this possession notice was also published in "The Hindu" and "Dainik Jagran" on 02.12.2023. Subsequently, the respondent bank put the property on auction sale by issuing a sale notice dated 03.12.2024 fixing the date of auction sale as 13.01.2025. The said sale notice was affixed on the secured asset on the same day. Further, the sale notice was sent to the applicant on 05.12.2024 through a registered post and also got published in "Hindustan" and "Hindustan Times" on 11.12.2024. In pursuance of above said sale notice, the property was auctioned on 13.01.2025 to successful bidder namely Sh. Bhola Ram for an amount of Rs.1,23,60,200/- against the reserve price of Rs.81,95,200/-. Further, the auction deposited the entire auction amount with time. Hence, the respondent bank issued a sale certificate on 18.03.2025. The property in question was registered with CERSAI vide Asset ID 200017230983.

6. It is submitted by the Id. Counsel of the auction purchasers that the auction purchaser on seeing the publication of sale notice in the newspapers on 11.12.2024 deposited the EMD for Rs.8,19,520/- on 10.01.2025 and participated in E-auction sale held on 13.01.2025 to purchase the property in question. Further, the auction purchaser has been declared a successful bidder with the bid amount of Rs.1,23,60,200.00. Accordingly, a Sale Confirmation Letter dated 14.01.2025 was issued in favour of the successful bidder. Further,

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the auction purchaser deposited the entire balance amount by 28.01.2025. After receipt of the entire auction amount, the respondent bank issued a sale certificate dated 18.03.2025 in favour of the auction purchaser.

7. I have heard Ld. Counsel for the parties and gone through the record.
8. It is alleged that without intimation of date of NPA and service of demand notice, the respondent bank served the Possession Notice. The possession notice has also not been published in two leading newspapers. The physical possession of the property has also been taken on 20.03.2024 without preparing inventory and punchnama of the movable items. It is also alleged that without serving the sale notice dated 03.12.2024 to the applicant, the respondent bank auction sold the property on 13.01.2025 to the respondent no.2, auction purchaser on very low price and also issued sale certificate in favour of auction purchaser on 18.03.2025. The property in question has also not been registered with CERSAI as required under section 26D of the Act.
9. On perusal of records it appears that the applicant admitted in para 5.8 that due to some unavoidable circumstance he could not pay the dues of the bank. Hence, the account was declared as NPA. Subsequently, the respondent bank issued Demand Notice dated 23.08.2023 under section 13(2) of the Act which was sent to the applicant through post on 24.08.2023 as appears from the postal receipt as annexure -1, page11 of counter affidavit. It was delivered to the applicant on 26.08.2023 as evident from a copy of tracking report annexed with supplementary counter affidavit as annexure - A, page 13 of. Since, the applicant failed to repay the dues of the bank even after service of demand notice, the respondent bank proceeded taken possession of the property by issuing Possession Notice dated 29.11.2023 and affix the same on the secured asset on the same day as appears from annexure -A, page 20 of counter

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affidavit. The possession notice was also sent to the applicant on 02.12.2023 through registered post and which was delivered to applicant on 04.12.2023 as evident from tracking report annexed as annexure A4, page 16 of supplementary counter affidavit. The possession notice was also published in "The Hindu" and "Dainik Jagran" on 02.12.2023.

10. Further, the property was put on auction sale by issuing a sale notice dated 03.12.2024 fixing the date of auction sale as 13.01.2025. So far service of sale notice is concerned, on perusal of records it appears that the said sale notice was sent to applicant at its two addresses on 05.12.2024 as appears from annexure - 7, page 29 of supplementary counter affidavit but its tracking report annexed to prove the delivery of sale notice as annexure - 7, page 31-33 of supplementary counter affidavit shows that the same was returned back to the respondent bank itself. Hence, the service of sale notice could not be proved by the respondent bank. However, respondent bank affixed the sale notice on the secured asset and also got published in "Hindustan" and "Hindustan Times" on 11.12.2024.

11. In pursuance of above said sale notice, the property was auctioned on 13.01.2025 to successful bidder Sh. Bhola Ram for an amount of Rs.1,23,60,200/- against the reserve price of Rs.81,95,200/-. Although the applicant did not alleged regarding deposit of auction amount but on perusal of counter affidavit of respondent bank it appears that the auction purchaser deposited 15% amount by 13.01.2025 through cheque no.214554 of SBI and, the rest 75% of auction amount was also deposited through various cheques and Cash deposit by 28.01.2025. But the respondent bank as well as auction purchaser failed to file a statement of account to prove when the above payment was liquidated in the account as the payment was made through cheques. On receipt of the auction amount, the respondent bank issued a sale certificate on 18.03.2025.

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12. So far allegation regarding registration of property with CERSAI is concerned, the respondent bank annexed the copy CERSAI report as annexure A10, page 41-43 which shows that the property in question was registered with CERSAI vide Asset ID 200017230983.
13. At the same time, it is important to consider the effect of non-joinder of the co-borrower, namely Smt. Meena Devi, in the present application. The non-joinder of the necessary parties may lead to the findings affecting the non party, even when the demand notice has been issued against both the borrowers. The controversy involved cannot be effectively adjudicated in her absence, being a party to the contract. Therefore, despite the alleged infirmities, no relief can be granted to the applicant.
14. In view of the above discussion, the present application deserves to be dismissed.

ORDER

The application SA 151 of 2024, is dismissed. No order for the costs.

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[KaushalendraYadav]
Presiding Officer
Debts Recovery Tribunal, Patna

Judgment signed, sealed, dated and pronounced in the open court on this 01ST Day of July, 2026.

Kaushalendra Yadav
01/07/26

[KaushalendraYadav]
Presiding Officer
Debts Recovery Tribunal, Patna