

DEBTS RECOVERY TRIBUNAL PATNA

Presiding Officer: Shri Kaushalendra Yadav

SA- 101 of 2021

1. **Krishna Kumar Sinha**, son of Late Shyam Bihari Lal, resident of Mohalla – Sri Ram Colony, Bengali Colony Road, Town – Patna City, P.O. – Begumpur, P.S. – Chowk, District – Patna.
2. **Smt. Sunita Sinha**, wife of Sri Krishna Kumar Sinha, resident of Mohalla – Sri Ram Colony, Bengali Colony Road, Town – Patna City, P.O. – Begumpur, P.S. – Chowk, District – Patna.

.....Applicants

Versus

1. Indian Bank (erstwhile Allahabad Bank), Patna Main Branch, Budh Marg, Town & District – Patna (Bihar), through its Chief Manager.
2. The Authorized Officer, Indian Bank (erstwhile Allahabad Bank), Patna Main Branch, Budh Marg, Town & District – Patna.
3. Amarendra Ranjan, C/o Anuranjan, R/o Bhagwati Path, in front of Kumar Apartment, Saristabad Kachi Talab, Gardanibagh, Patna – 800001.
4. Sri Navin Kumar Sinha (Proprietor of Sonu Hotel), S/o Late Chandra Shekhar Prasad, R/o Chamadoria, P.O. – Jhauganj, Patna City, District – Patna, PIN – 800008 (Guarantor).

..... Respondents

Presents;

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| For the Applicants | : Sh. Sanjiv Kumar, Advocate |
| For the Respondent Bank | : Sh., Binod Kumar Jha Advocate |
| For the Auction Purchaser | : Sh C. S. P Sinha, Advocate |
| For Respondent No. 4 | : Sh Purshotum Kumar, Advocate |

Dated: 30.06.2026

JUDGMENT

1. The present application has been filed seeking to quash the entire SARFAESI proceedings, including setting aside the demand notice dated 03.08.2019 and the possession notice dated 25.03.2021.

Kaushalendra Yadav
 30/6/26

2. The brief facts of the case are as follows: the applicant had availed a housing loan of ₹8.6 lakh from the respondent Bank. Due to default in repayment of the loan, the loan account was classified as a Non-Performing Asset (NPA) by the respondent Bank on 24.07.2019. Thereafter, the respondent Bank initiated SARFAESI proceedings by issuing a demand notice under Section 13(2) of the Act dated 03.08.2019, followed by the issuance of a possession notice dated 25.03.2021 under Section 13(4) of the Act. Being aggrieved by the said possession notice, the present securitization application has been filed by the applicant.
3. The learned counsel for the applicant submitted that the applicant had been regularly paying the loan installments; however, all of a sudden, the respondent bank issued a demand notice dated 03.08.2019 under Section 13(2) of the SARFAESI Act, declaring the account as NPA on 24.07.2019. It is further submitted that after receiving the demand notice, the applicant approached the respondent bank and submitted a representation dated 28.08.2019, but the respondent bank did not respond in writing and, on the oral assurance of the then field officer, the applicant started paying ₹18,000 per month as installments and continued to pay regularly till February 2020; thereafter, due to COVID-19, the applicant was unable to continue the payments. It is further submitted that in January 2021, the applicant again started paying the installments; however, the respondent bank issued a possession notice dated 25.03.2021 under Section 13(4) of the SARFAESI Act. It is further alleged that the said possession notice was neither served upon the applicant nor affixed on the secured asset. It is further submitted that despite requesting the statement of account relating to the subject loan account, the respondent bank has failed to provide the same, and even the applicable rate of interest is not known to the applicant. It is also submitted by the applicant that the declaration of the NPA is not according to the RBI guidelines. The learned counsel for the applicant submitted that the respondent bank

K. Anshuman
22/11/26

issued a sale notice dated 22.10.2021, which was challenged by the applicant through an I.A. in the present Original Application; however, due to the vacant post of the Presiding Officer in the Hon'ble Tribunal, the applicant also filed CWJC No. 19347 before the Hon'ble Patna High Court, which was disposed of on 25.11.2021, pursuant to which the bank withdrew the said sale notice. Thereafter, the respondent bank again issued a sale notice dated 17.02.2022 fixing the sale on 09.03.2022, against which the applicant filed CWJC No. 3505/2022 before the Hon'ble Patna High Court, and the petition was disposed of on mutually agreeable terms with a direction to the applicant to deposit Rs. 3 lakhs by 31.03.2022 and to submit a settlement proposal before the Authorized Officer. In compliance thereof, the applicant deposited Rs. 2 lakhs on 15.03.2022 and Rs. 1 lakh on 30.03.2022 and submitted a settlement proposal on 17.03.2022; however, the same was rejected vide letter dated 25.03.2022 stating that the property in question had already been sold on 09.03.2022, which is in violation of the directions of the Hon'ble High Court. Aggrieved thereby, the applicant filed MJC No. 577 of 2022 for initiating contempt proceedings, which were ultimately dropped on 08.07.2024 upon the statement made by the respondent bank that the e-auction sale held on 09.03.2022 had been withheld. It is further alleged that the sale notice dated 17.02.2022 did not comply with the mandatory 30 days' notice requirement under the Act, nor was it published in the newspaper; moreover, no valuation report was obtained and the property was sold at a lower price. It is also submitted that, as per the order dated 15.07.2022 passed by this Hon'ble Tribunal, the applicant submitted a settlement proposal on 02.08.2022 expressing willingness to liquidate the entire dues subject to withdrawal of the e-auction and reasonable waiver of post-NPA interest; however, despite requesting the bank to provide a detailed calculation chart of dues, including breakup of interest, the bank vide letter dated 16.08.2022 failed to furnish the same, and even thereafter did not respond to the

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20/6/26

applicant's subsequent letter dated 26.08.2022 seeking an updated statement of account, particularly questioning the charging of Rs. 4,42,608 as interest for the period 01.07.2019 to 31.07.2022.

4. The respondent Bank submitted that due to default in repayment of the loan amount, the loan account was classified as NPA on 24.07.2019, followed by issuance of a demand notice dated 03.08.2019 under Section 13(2) of the SARFAESI Act, which was duly served upon the applicant. As the outstanding dues were not cleared, the respondent Bank issued a possession notice dated 25.03.2021 under Section 13(4) of the Act, which was duly delivered to the applicant, affixed on the secured asset, and published in two leading newspapers. It is further submitted that after receipt of the possession notice, the applicant approached the Bank and proposed a repayment schedule, undertaking to pay Rs. 25,000 on 31.03.2021, Rs. 2,00,000 on 28.04.2021, Rs. 2,00,000 on 28.05.2021, and thereafter Rs. 18,000 per month from June 2021 till final liquidation of the dues; however, the applicant failed to comply with the said undertaking. Thereafter, the respondent Bank issued a sale notice dated 22.10.2021, which was challenged by the applicant before the Hon'ble High Court in CWJC No. 19347/2021, and the said notice was withdrawn by the Bank on 25.11.2021. Subsequently, the respondent Bank issued another sale notice dated 17.02.2022, which was duly served upon the applicant, published in two newspapers, and affixed on the secured asset. Against the said sale notice, the applicant again invoked the writ jurisdiction by filing CWJC No. 3505/2022, which was disposed of by order dated 09.03.2022, whereby the applicants were directed to deposit a sum of Rs. 3,00,000 by 31.03.2022 and to submit a proposal for settlement, to be considered by the Bank in terms of its policy. Pursuant thereto, the applicant submitted a representation dated 17.03.2022 for settlement of the account; however, the proposal was not in accordance with the Bank's policy and RBI guidelines and was accordingly rejected, which decision was

K. Anand
20/6/26

communicated to the applicant vide letters dated 23.03.2022 and 25.03.2022. It is further submitted that in pursuance of the sale notice dated 17.02.2022, the secured asset was sold to the auction purchaser, namely Amarendra Ranjan (Respondent No. 3). The applicant again submitted a representation dated 02.08.2022, which was replied to by the Bank vide letter dated 16.08.2022, requesting the applicant to deposit a certain amount within a week; however, the applicant failed to liquidate the dues

5. The learned counsel for the auction purchaser (Respondent No. 3) has filed a vakalatnama; however, no counter affidavit is available on the record of the Hon'ble Tribunal, nor has the same been uploaded online. Upon perusal of the record, it is found that during the pendency of the present Securitisation Application, the auction purchaser filed an Interlocutory Application (I.A.), which has not been numbered. In the said application, the auction purchaser has stated that although he was declared the highest bidder in the auction, the respondent Bank has neither accepted the remaining 75% of the bid amount nor confirmed the sale in his favour. Accordingly, through the said I.A., the auction purchaser has prayed for issuance of appropriate directions to the respondent Bank to accept the balance sale consideration and complete the sale process.
6. I have heard the learned counsels of both the parties and gone through the records.
7. It is alleged by the applicants that after receiving the demand notice, the applicant approached the respondent bank and submitted a representation dated 28.08.2019, but the respondent bank did not respond. It is further alleged that the said possession notice was neither served upon the applicant nor affixed on the secured asset. It is further submitted that despite requesting the statement of account relating to the subject loan account, the respondent bank has failed to provide the same, and even the applicable rate of interest is not known to the applicant. It is also submitted by the applicant that the

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20/6/26

declaration of the NPA is not according to the RBI guidelines. It is alleged by the applicant that the sale on 09.03.2022 in pursuant of the sale notice dated 17.02.2022, which is in violation of the directions of the Hon'ble High Court. It is further alleged that the sale notice dated 17.02.2022 did not comply with the mandatory 30 days' notice requirement under the Act, nor was it published in the newspaper; moreover, no valuation report was obtained and the property was sold at a lower price. It is also submitted that, as per the order dated 15.07.2022 passed by this Hon'ble Tribunal, the applicant submitted a settlement proposal on 02.08.2022 expressing willingness to liquidate the entire dues subject to withdrawal of the e-auction and reasonable waiver of post-NPA interest; however, despite requesting the bank to provide a detailed calculation chart of dues, including breakup of interest, the bank vide letter dated 16.08.2022 failed to furnish the same, and even thereafter did not respond to the applicant's subsequent letter dated 26.08.2022 seeking an updated statement of account, particularly questioning the charging of Rs. 4,42,608 as interest for the period 01.07.2019 to 31.07.2022.

8. Upon perusal of the record, it is found that the respondent bank has not placed on record any statement regarding the representation dated 28.08.2019 allegedly submitted by the applicant, nor any proof showing that a reply thereto was ever issued. Although the applicant has filed a photocopy of a letter dated 28.08.2019 as Annexure-2 at page 25 of the S.A., the said document neither bears any acknowledgment of receipt by the bank nor is accompanied by any postal receipt, tracking report, or other material to establish that the representation was ever served upon the respondent bank. The document appears to be merely a handwritten letter without proof of its delivery to the bank.
9. As regards the allegation that the declaration of the loan account as NPA on 24.07.2019 was improper, it is found that the applicant has filed the statement of account as Annexure-5 of SA and Annexure-18

K. Anand
30/6/26

at pages 38 to 43 of the 2nd Supplementary Affidavit. The respondent did not controvert this statement of account by filing different statements, if any. According to which the Drawing Power is 1125000 which has never exceeded Balance. Let us see the details as per the statement of account Total Interest Debited={₹8,763 (on 30.04.2019)} + {₹9,106 (on 31.05.2019)} + {₹8,740 (on 30.06.2019)} = I{₹26,609} Total Credits Deposited={₹12,000 (29.05.2019)} + {₹18,000 (19.06.2019)} + {₹18,100 (24.07.2019)} = {₹48,100}. Thus the cumulative deposits exceeded the cumulative interest charges by ₹21,491. Because the deposits completely offset the interest burden, this account cannot be flagged as "Out of Order" based on an interest deficit. To illustrate further, the individual debits were resolved well within the maximum permissible 90-day calendar allowance.

- The 30 April Debit (₹8,763): This charge was fully regularized and wiped out just 29 days later by your ₹12,000 deposit on 29 May.
- The 31 May Debit (₹9,106): This charge was fully serviced 19 days later by your ₹18,000 deposit on 19 June.
- The 30 June Debit (₹8,740): This charge was covered 24 days later by your ₹18,100 deposit on 24 July.

As such, this account will not be NPA on 24 July 2019 under the interest shortfall rule. In this specific scenario, the deposits completely and comfortably covered your interest debited over the rolling 90-day tracking window, keeping the account in healthy standard standing.

10. Upon perusal of the record, it is found that the respondent bank has not filed any proof regarding individual service of the possession notice upon the applicant. In paragraph 4 of the counter affidavit, the respondent bank has only stated that the possession notice dated 25.03.2021 was affixed upon the secured asset and published in two newspapers. In support thereof, the bank has annexed photographs at page 11 of the counter affidavit showing alleged affixation of the possession notice and copies of newspaper publications as Annexure-

Kanwar Singh
28/6/26

A series at page 12 and 13. While the publication in Dainik Jagran is discernible from the record, the copy of the English newspaper placed at page 12 is incomplete and does not disclose the name of the newspaper. Even in paragraph 4 of the counter affidavit, the respondent bank has not specified the name of the English newspaper in which the publication was allegedly made.

11. It is alleged by the applicant that the sale conducted on 09.03.2022 pursuant to the sale notice dated 17.02.2022 was in violation of the directions of the Hon'ble High Court. Upon perusal of the record, it is found that the applicant had filed M.J.C. No. 577 of 2022 seeking initiation of contempt proceedings against the respondent bank. However, the said contempt proceedings were ultimately dropped vide order dated 08.07.2024 on the ground that the bank had withheld the sale and, therefore, no case of contempt was made out.

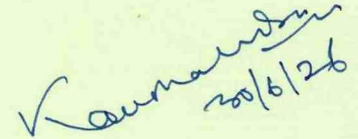
12. As regards the challenge to the sale notice, it is found that in paragraph 11 of the counter affidavit, the respondent bank has stated that the sale notice was sent to the applicant by post, affixed upon the secured asset, and published in two newspapers. However, no documentary proof has been filed by the respondent bank to substantiate the aforesaid assertions. Further, despite specific allegations raised by the applicant, no valuation report has been brought on record by the respondent bank. So far as the contention regarding non-compliance with the requirement of a 30-day sale notice is concerned, upon perusal of the record, it is found that prior to the sale notice dated 17.02.2022, the respondent bank had already issued an earlier sale notice dated 22.10.2021. The sale notice dated 17.02.2022 was, therefore, a subsequent sale notice. The sale in question was conducted on 09.03.2022 pursuant to the sale notice dated 17.02.2022, i.e., after expiry of more than 15 days from the date of publication of the said notice. Accordingly, prima facie, the requirement of the prescribed notice period for a subsequent sale appears to have been complied with.

K. Srinivasan
20/6/26

- 13.As regards the allegation concerning the charging of interest, it is found that neither the applicant nor the respondent bank has filed the loan sanction document on record. In the absence of the said document, it cannot be ascertained as to the rate of interest agreed upon and charged at the time the loan was sanctioned.
14. In view of the above discussion present SA succeeds.

ORDER

The application SA 101 of 2021 filed by Krishna Kumar Sinha and others, is allowed with costs. The SARFAESI Action in question against applicants, including auction sale is hereby quashed. The respondent Bank shall refund the amount deposited and registration expenses, if any by the auction purchaser with 7% simple interest. The respondent Bank will hand over the possession of the property if taken, to the mortgagor. The respondent Bank will not be entitled to charge any amount for the expenses and the recovery or any other charges for the Action under challenge.

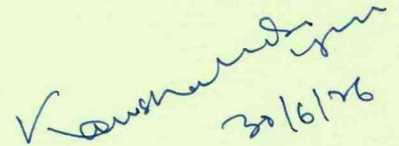


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Presiding Officer

Debts Recovery Tribunal, Patna

Judgment signed, sealed, dated and pronounced in the open court on this 30th Day of June, 2026.



[KaushalendraYadav]

Presiding Officer

Debts Recovery Tribunal, Patna