IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12385 of 2023

CNR No. BRHC010789352023

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1. Ashok Kumar Verma Son of Late Gopaljee Prasad Srivastava Resident of Road No. 11, House No. LH/149, Sri Krishna Nagar, Kidwaipuri, P.S. - Budha Colony, District - Patna.
2. Mrs. Neela Devi, W/o Ashok Kumar Verma Resident of Road No. 11, House No. LH/149, Sri Krishna Nagar, Kidwaipuri, P.S. - Budha Colony, District - Patna.
3. Abhay Kumar Verma, S/o Ashok Kumar Verma Resident of Road No. 11, House No. LH/149, Sri Krishna Nagar, Kidwaipuri, P.S. - Budha Colony, District - Patna.
4. Avinash Kumar Verma, S/o Ashok Kumar Verma Resident of Road No. 11, House No. LH/149, Sri Krishna Nagar, Kidwaipuri, P.S. - Budha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Registrar, Debts Recovery Tribunal, Karpuri Sadan, 2nd Floor, A, B, F wings, Kendriya Karamchari Parisar, (GPOA), Ashiana Digha Road, Patna- 800025.
2. The State of Bihar, through the District Magistrate, Patna.
3. The Authorized Officer-cum-Chief Manager, Canara Bank, Assets Recovery Management Branch, Lav Kush Tower, Ground Floor, Exhibition Road, Patna- 800001.
4. M/s Nissa Realtors Pvt. Ltd., Ghar Apana Apartment, Block- B. Opp. D.A.V. School, Naar Saruna More, Bailey Road, P.S.-Danapur, District- Patna-801503 represented through Deepak Singh and Sudhir Kumar Singh, Director.
5. Mrs. Alka Verma, W/o Late Prabhat Kumar Verma presently residing at C/o Bishamber Nath Srivastav, Banduk Waali Gali, Kamal Market, 1st Floor, Ward No. 24, Moti Jheel, P.O. and P.S. Muzaffarpur, District - Muzaffarpur, Bihar Pin- 842001.
6. Miss Shanvi Verma (Minor), D/o Late Prabhat Kumar Verma, Mrs. Alka Verma (Natural Guardian), Presently residing at C/o Bishamber Nath Srivastav, Banduk Waali Gali, Kamla Market, 1st Floor, Ward No. 24, Moti Jheel, P.O. and P.S. - Muzaffarpur, District - Muzaffarpur, Bihar Pin-842001.
7. Gaurav Ashish, Son of Awadh Prasad Gupta, R/o Boring Road, Adri Gali, Patna- 800013.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Dr. Binay Kumar Singh, Advocate
For the UOI : Mr. Satyendra Kumar Jha, CGC

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For the State : Mr. Swapnil Kumar Singh, Advocate
For the Respondent No. 3: Mr. Manish Kishore, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 09-10-2026

1. The Writ petition is filed for the following reliefs:

> "I. For issuance of a writ in the nature of mandamus directing the respondent no. 2 and 3 to restore physical possession of only residential house of the petitioner situated at Sri Krishnanagar, Kidwaipuri, Patna, the actual possession of which, dehors statutory provisions u/s 14 of the SARFAESI Act was forcibly taken on 07.07.2023 from the petitioners having possessory right over the property in question although they are not borrowers of respondent no. 3.
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> II. For issuance of writ in the nature of cirtiorari quashing the order dated 07.07.2023 passed in S.A. No. 59/2023 by Debts Recovery Tribunal, Patna (hereinafter called Tribunal) whereby and where under the Ld. Presiding Officer has been pleased to dismiss the interlocutory application No. 403/2023 along with S.A. No. 59/2023 holding that the petitioners have no legal right and that there is no prima facie case and justification to allow the interlocutory application.

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III. For issuance of a writ in the nature of the certiorari for quashing the vacation notice dated 18.01.2023 and also that dated 03.07.2023 whereunder physical possession, instead of taking it from the borrower in terms of Section 14 of SARFAESI Act has been taken on 07.07.2023.

IV. For holding that having issued possession notice dated 27.12.2022 against the mortgaged property of the borrowers (Respondent No. 4) including that of legal heirs (Respondent No. 6 and 6) and passing of orders in an application u/s 14 of SARFAESI Act as is evident from vacation notice dated 18.01.2023, the forcible action by the bank to evict the petitioners only who are not borrowers but have possessory right to the exclusion of the mortgaged property of the company is in derogation of Section 146 of the Contract Act besides being arbitrary and manifestly malafide.

V. For holding that the order dated 07.07.2023 passed by D.R.T., Patna is also in the teeth of Section 2(11) of Code of Civil Procedure

VI. For any other relief/reliefs for which the petitioners may be deemed entitled to under the facts & circumstances of the

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case.”

2. The brief facts culled out of the Writ petition are that the petitioner No. 1 is the father , petitioner Nos. 2 is mother, and petitioner Nos. 3 and 4 are brothers of Late Prabhat Kumar Verma, who was a Director of respondent no. 4-company. Respondent no. 3-bank had sanctioned an overdraft facility of Rs. 1.20 crore to the company against, inter alia, two flats belonging to the company and the residential house of Late Prabhat Kumar Verma situated at Kidwaipuri, Patna.

3. Late Prabhat Kumar Verma died on 01.05.2018, leaving behind his widow, namely Mrs. Alka Verma (respondent No.5), and minor daughter, namely Miss Shanvi Verma (respondent No. 6). The petitioners, being family members, continued to reside in the residential house. The account of the company was subsequently classified as NPA on 30.07.2019 and the bank initiated proceedings under the SARFAESI Act.

4. It is stated in the Writ petition that the bank initially issued a demand notice dated

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20.08.2019 and a possession notice dated 06.11.2019. The said proceedings were challenged before the Debts Recovery Tribunal by the widow and minor daughter of Late Prabhat Kumar Verma in S.A. No. 224 of 2019. The Debts Recovery Tribunal, by judgment dated 26.08.2022, allowed the S.A. and quashed the demand notice.

5. Thereafter, the bank initiated fresh proceedings under the SARFAESI Act by issuing another demand notice dated 12.09.2022 followed by a possession notice dated 27.12.2022 in respect of the mortgaged properties, including the residential house in which the petitioners were residing.

6. In the meantime, the bank also instituted O.A. No. 710 of 2019 under the Recovery of Debts and Bankruptcy Act, 1993. By judgment dated 02.09.2022, the Debts Recovery Tribunal directed attachment of the mortgaged properties, and thereafter the Recovery Officer issued a warrant of attachment of the immovable property on 08.02.2023.

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7. The bank subsequently obtained permission from the District Magistrate and issued a vacation notice dated 03.07.2023 in respect of the residential house occupied by the petitioners. According to the petitioners, the said notice was issued despite the subsisting attachment order passed in the proceedings under the Recovery of Debts and Bankruptcy Act, 1993. The petitioners challenged the action before the Debts Recovery Tribunal by filing S.A. No. 59 of 2023, along with an interlocutory application seeking stay of the vacation notice.

8. The Debts Recovery Tribunal, by order dated 07.07.2023, dismissed S.A. No. 59 of 2023 as well as the interlocutory application. Thereafter, the petitioners are dispossessed from the residential house.

9. The petitioners have also stated that Title Partition Suit No. 185 of 2021 concerning the property is pending before the competent Civil Court, in which the bank and the concerned legal heirs have been impleaded as parties.

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10. Aggrieved by their dispossession and the action of the bank, the petitioners have filed the present Writ petition.

11. The Learned counsel for the petitioners submits that the petitioners are not borrowers of the bank and that they were in possession of the residential house in their own right. It is contended that while exercising power under Section 14 of the SARFAESI Act, the District Magistrate could not have directed their dispossession without examining their independent claim of possession and without following the procedure prescribed by law.

12. The Learned counsel for the petitioners further submits that the bank could not selectively proceed against the residential house of the petitioners while leaving the other mortgaged properties without taking similar physical possession, and such action is arbitrary and discriminatory.

13. It is also submitted that the residential house had already been attached pursuant to the

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judgment dated 02.09.2022 passed in O.A. No. 710 of 2019 and the warrant of attachment dated 08.02.2023. Therefore, according to the Learned counsel, the subsequent vacation notice issued by the bank could not override the judicial order of attachment.

14. The Learned counsel for the petitioners further submits that the petitioners were in settled possession of the house and their claim of possession cannot be brushed aside merely on the basis of the proceedings, against the borrower. It is also contended that the rights relating to the property are already the subject matter of the pending Title Partition Suit.

15. It is lastly submitted that the petitioners are senior members of the family and were residing in the house for a considerable period and their dispossession was therefore not in accordance with law. The Learned counsel accordingly prays for interference with the impugned action and for restoration of the petitioners' possession, subject to the rights of the

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parties being adjudicated in accordance with law.

16. A counter affidavit has been filed on behalf of the respondent Bank. The Learned counsel for the respondent-Bank submits that the Writ petition is not maintainable either on facts or in law, as the petitioners have an efficacious alternative remedy under Section 18 of the SARFAESI Act against the order dated 07.07.2023 passed by the Debts Recovery Tribunal and under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 against the order of the Recovery Officer. It is submitted that no exceptional circumstance has been shown warranting exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

17. The Learned counsel for the respondent-Bank further submits that the petitioners have raised disputed questions relating to ownership and possession of the mortgaged property, which cannot be appropriately adjudicated in a Writ proceeding. It is pointed out

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that the petitioners have already instituted Title Suit No. 185 of 2021 in respect of the property.

18. It is submitted that Late Prabhat Kumar Verma voluntarily mortgaged his self-acquired property with the Bank by depositing the title deeds to secure the credit facilities granted to the company. The liability having remained unpaid, the Bank was entitled to enforce the security in accordance with the SARFAESI Act and the Rules.

19. The Learned counsel for the respondent-Bank submits that the Bank had also instituted O.A. No. 710 of 2019 before the Debts Recovery Tribunal for recovery of its dues. The O.A. was allowed on 02.09.2022 and the recovery certificate was thereafter placed before the Recovery Officer in R.P. No. 212 of 2022. The Recovery Officer, by order dated 30.09.2023, rejected the objection raised by petitioner no. 1 regarding the property.

20. It is further submitted that the proceedings under the Recovery of Debts and Bankruptcy Act, 1993 and the SARFAESI Act can

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proceed simultaneously and, therefore, the pendency of the recovery proceedings or attachment does not prevent the secured creditor from taking steps under the SARFAESI Act.

21. The Learned counsel for the respondent-Bank further submits that the petitioners had already challenged the SARFAESI proceedings before the Debts Recovery Tribunal in S.A. No. 31 of 2023 and again in S.A. No. 59 of 2023. S.A. No. 59 of 2023 and the connected interlocutory application were dismissed on merits by order dated 07.07.2023. Instead of availing the statutory remedy of appeal before the DRAT under Section 18 of the SARFAESI Act, the petitioners have approached this Court.

22. It is also submitted by the Learned counsel for the respondent-Bank that the petitioners have no independent title or legally enforceable right over the mortgaged property. Any claim regarding ownership, partition or possessory rights is a matter to adjudicated before the competent Civil Court. The pendency of the

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Title Suit does not, by itself, bar the Bank from enforcing its valid security interest.

23. The Learned counsel further submits that the Bank has acted strictly in accordance with the statutory procedure for recovery of its dues and enforcement of the secured asset. The Writ petition, being an attempt to bypass the statutory appellate remedies and to delay recovery of public money, is therefore liable to be dismissed.

24. Heard the Learned counsel for the petitioner as well as the Learned counsel for the Bank and perused the records.

25. Upon consideration of the pleadings, materials on record and the rival submissions advanced on behalf of the parties, this Court finds that the principal grievance of the petitioners relates to their alleged dispossession from the residential house, pursuant to measures taken by the respondent-Bank under the SARFAESI Act. The petitioners assert an independent possessory right over the property, whereas the Bank disputes such claim and asserts its right to enforce the secured

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asset in accordance with law.

26. This Court also finds that the petitioners had already approached the Debts Recovery Tribunal, Patna, in respect of the measures taken by the Bank and the said proceedings, including S.A. No. 59 of 2023 and the connected interlocutory application, came to be dismissed by order dated 07.07.2023. The petitioners have an efficacious statutory remedy against the said order before the appropriate appellate forum under the SARFAESI Act. Further, the questions relating to the petitioners' alleged title, possession and the effect of the pending title/partition proceedings involve disputed questions of fact, which cannot appropriately be adjudicated in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution.

27. The contention regarding attachment of the property in the proceedings under the Recovery of Debts and Bankruptcy Act, 1993 and the alleged conflict between such attachment and the subsequent measures taken under the

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SARFAESI Act are also matters which can appropriately be raised before the competent statutory forum. This Court, in the present proceedings, is not inclined to adjudicate upon the competing rights of the parties or the validity of the measures taken by the Bank when the statute itself provides an efficacious mechanism for such adjudication.

28. In the case of **PHR Invent Educational Society v. UCO Bank and Others** (Civil Appeal No. 4845 of 2024), their Lordships of the Apex Court have held as follows:

> *"Ordinarily the High Court would not entertain a petition u/Art. 226 if an effective remedy is available to the aggrieved person..."*

29. Likewise, in the matter of **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and Ors.,** reported in **(2024) 2 SCC 1**, their Lordships of the Apex Court have held as follows:-

> *"**97**. This Court has time and again, reminded the High Courts that they should not entertain petition under Article*

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226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act ...”

30. In the case of **United Bank of India v. Satyawati Tondon and Ors.** reported in **(2010) 8 SCC 110**, their Lordships of the Apex Court have held as follows:-

*“**43**. ... the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions ...”*

It is further held:-

“... the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.”

31. The Hon’ble Apex Court, in the aforesaid judgments, has categorically held that the High Courts cannot entertain a Writ petition

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under Article 226 of the Constitution when an effective alternative remedy is available to the aggrieved person.

32. The Writ petition is, accordingly, dismissed as not maintainable in light of the law laid down by the Hon’ble Supreme Court of India in the aforementioned judgments.

33. The petitioners may approach the appropriate forum in accordance with the law laid down by the Hon'ble Supreme Court of India as stated supra.

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

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2026
Transmission Date	

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