# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.1265 of 2023**

**CNR No. BRHC010081842023**

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Ummatun Nisha W/O Late Najir Ahmad R/o- Vill- Trumuhan, P.O.- Jalwara, P.S.- Kamtaul, Distt- Darbhanga.

... ... Petitioner/s

Versus

1. Punjab National Bank (Merged United Bank of India) Through its Branch Manager, Darbhanga Branch, Near Darbhanga Tower P.0- Lal Bagh, Distt- Darbhanga.
2. The Authorized Officer, Punjab National Bank (Merged United Bank of India) Circle Office, Darbhanga.
3. The Authorized Officer, Punjab National Bank (Merged United Bank of India) Regional Office Situated at Dr Rajendra Prasad Path, Katihar-854105.
4. The District Magistrate cum Collector, Darbhanga.
5. The Sub Divisional Officer, Sadar Darbhanga.
6. The Circle Officer, Sadar, Darbhanga.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Kedar Jha, advocate
For the Respondent/s : Mr. Brajesh Kr. Chopra, SC25
Mr. Aditya Kr. Singh, AC to SC 25

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY**

**ORAL JUDGMENT**
**Date : 30-09-2026**

1. Heard the Learned counsel for the petitioners as well as the Learned counsel for the respondent.

2. The Writ petition has been filed for the following reliefs:

i. That this is an application for issuance of a writ/writs, Direction/Directions for setting aside

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the order dated 11.1.2019 passed by the learned Collector cum District Magistrate Darbhanga in SARFAESI case no 67 of 2016 filed under section 14 of the SARFAESI Act by respondent no 3 for taking physical possession of the property of the debt borrower described in schedule of the property mentioned on the last page of SARFAESI case no 67 of 2016 before Collector but order dated 11.1.2019 passed by learned Collector cum District Magistrate, Darbhanga, in SARFAESI case no 67 of 2016 includes the dwelling single house property of petitioner with her co shares. There is deed no 1864 dated 19.2.79 mention in sale deed of borrower from which debt borrower has registered 15 Dhur [3.3] decimal land in his name by registered sale deed no 10115 dated 6.7.2007. Learned District Magistrate Cum Collector not looked into as to whether the possession sought by the respondent in the case is of the property as mentioned in order impugned, the same being violative of provision of the Act and Rules and principal of natural justice.

ii. For issuance of writ/writs, Direction/Directions/ Order/ Orders restraining the respondents in taking possession of the property of the petitioner to the aforesaid under order impugned, Alternatively.

iii. For any other writ/ writs, order/orders, direction/directions as

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this Hon'ble court may deem fit and proper in the facts and circumstances of this case.

3. It is the specific contention of the Learned counsel for the petitioner that the petitioner is neither the borrower nor the guarantor; despite this, his asset has been kept for auction under the SARFAESI Act.

4. For better appreciation, Section 17(1) of the SARFAESI Act is reproduced hereinbelow:

> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application alongwith such fee, as may be prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, for "may prefer an appeal" (w.r.e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures*

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> *had been taken: [provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*

5. It is well settled that, if an effective alternative remedy is available under the relevant statute, a petition under Article 226 of the Constitution shall not be entertained. In this regard, the Hon'ble Apex Court, in the case of ***United Bank of India v. Satyawati Tondon***, reported in **(2010) 8 SCC 110**, held as follows:

> *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. While dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code*

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> *unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, 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.*

6. In case of ***Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.***, reported in (2024) 2 SCC 1, the Hon'ble Apex Court held as follows:-

> *97. This court has time and again, reminded the high courts that they should not entertain petition under article 226 of the constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI ACT.*

7. In case of ***PHR Invent Educational Society Vs UCO Bank & Ors*** reported in **2024 Insc 297,** the same principles have been reiterated by the Hon'ble Supreme Court.

8. In view of the above, this Court is of the

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considerable view that the Writ petition is not maintainable when an alternative and effective remedy is available to the petitioner. However, the petitioner is at liberty to approach the appropriate forum for availing his remedy, and the concerned authority shall also consider the aspect of limitation.

9. With the aforesaid observations, the Writ petition stands disposed of.

**(G. Anupama Chakravarthy, J)**

*Amandeep/-*

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