

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2771 of 2025

=====

Pushplata Ishwar Wife of Subhash Kumar Ishwar, Resident of Flat No.603,
Rameshwar Apartment, Bhoot Nath Road, P.S. Agamkua, Dist- Patna-800006.

... .. Petitioner/s

Versus

1. The Presiding Officer, Debt Recovery Tribunal, Ashiana Digha Road, P.S-
Rajiv Nagar, Patna.
2. Indian Bank, Corporate Office- PB No. 5555, 254-260, Avvai Shanmugam
Salai, Royapettah, Chennai- 600 014, Through its Chairman and Managing
Director.
3. The Authorised Officer cum Chief Manager, Indian Bank, Zonal Office, 1st
Floor, Budh Marg, P.S.- Kotwali, Patna Bihar 800001.
4. Branch Manager, Indian Bank, Boring Road Branch D/34, Sahdeo Mahto
Marg Sri Krishna Puri Boring Road, Patna-800001.
5. M/s Mangal Murti Constructions, through its Partners, Amit Kumar Singh
and Kavita Singh, 1st Floor Sri Ram Kunj Apartment, East Boring Canal
Road, Patna- 800001.
6. Amit Kumar Singh Son of Jogi Singh, Resident of 1st Floor, Flat No. B-21
Sri Ram Kunj Apartment, East Boring Canal Road, Patna-800001.
7. Kavita Singh Wife of Amit Kumar Singh, Resident of 1st Floor, Flat No. B-
21 Sri Ram Kunj Apartment, East Boring Canal Road, Patna-800001.
8. Elitefalcons Private Limited, Unit 101, Shriram Towers, Kankarbagh Colony
More, 800020, through its Chairman and Managing Director.
9. Gaurav Kumar Mishra Son of Neeraj Kumar Mishra, Resident of- Ward No.
4, Near Durga Mandir, Pachiwari Tola Pator, P.S.- Ashok Paper Mill, Dis-
trict- Darbhanga, presently posted as Executive Manager, Elitefalcons Pri-
vate Limited.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Sr. Adv. Mr. Sunit Kumar, Advocate Mr.Nishant Kumar, Advocate Mr. Rishav Kumar, Advocate
For the Auction Purchaser:		Mr. Sanjeev Kumar, Advocate Mr. P.S. Mishra, Advocate
For the Respondent/Bank:		Mr. Sanjay Singh Thakur, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 20-01-2026

1. The present writ petition has been filed for quashing



the order dated 04.02.2025 passed by the learned Presiding Officer, Debt Recovery Tribunal, Patna in S.A. No. 287 of 2024 whereby the SARFAESI application preferred by the petitioner has been dismissed. The petitioner has further prayed for quashing the entire proceedings initiated by the respondent -Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and for issuance of a direction upon the respondent / Bank to cancel the auction sale of the subject property and to accept repayment of debts from the petitioner after settlement.

2. The fact of the case in brief is that the petitioner is the owner and is in peaceful possession of Shop Nos. UG-04, UG-05, UG-06 and UG-06-A situated at the first floor of a multistoried building known as "Jaikriti Pearl Court", located at Mauza-Dujra, East Boring Canal Road, P.S. - Buddha Colony, District – Patna having a super built-up area of approximately 1330 sq. ft. with a carpet area of about 900 sq. ft. which was duly purchased by the petitioner through a registered sale deed dated 30.01.2016. The respondent no. 5, namely M/s Mangal Murti Construction through its partners Amit Kumar Singh (Respondent No. 6) and Kavita Singh (Respondent No. 7) approached



the petitioner to associate with their business venture and made her a guarantor for the credit facilities availed by them from the respondent - Bank. In return, the said respondents assured and promised the petitioner of a regular annual payment of Rs. 35,00,000/- which amount was duly paid to her till the year 2019. On the basis of such assurance the petitioner was made guarantor for multiple loan facilities sanctioned by the respondent -Bank. Her signatures were obtained on various bank documents without furnishing any loan agreement, sanction letter or statement of accounts. The petitioner therefore remained completely unaware of the multiplicity of loan accounts in respect of which she had been shown as guarantor.

3. The repayment of the loan was secured by mortgage of flats belonging to Respondent No. 6 and the subject property of the petitioner. Since the year 2019 the respondent nos. 5 to 7 stopped paying the assured annual return of Rs. 35 lacs to the petitioner and deliberately concealed the deteriorating financial condition of their firm. Subsequently, the respondent -Bank issued three separate notices dated 02.05.2023 to respondent no. 5 in respect of three different loan accounts which were served upon the petitioner as guarantor claiming overdue amount of total Rs. 5,79,713/-. However, the respondent nos. 6 and 7



assured the petitioner that the said notices could be ignored and were merely routine communications from the Bank.

4. All of a sudden, the Authorized Officer of the respondent -Bank issued a demand notice dated 29.06.2024 under Section 13(2) of the SARFAESI Act, 2002, which was served upon respondent nos. 5 to 7 including the petitioner alleging that the two loan accounts had been declared Non-Performing Assets (NPA) on 27.06.2024 and demanded a total outstanding amount of Rs. 2,62,06,848.83 as on 29.06.2024 together with interest.

5. On 28.08.2024, the respondent -Bank issued a possession notice under Section 13(4) of the SARFAESI Act, 2002 read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 and took physical possession of the secured assets including the subject property.

6. Being aggrieved by such action the petitioner filed S.A. No. 287 of 2024 before the DRT, Patna on 27.09.2024 challenging the entire SARFAESI action. During pendency of the S.A. the respondent / Bank issued auction sale notice dated 10.10.2024 and the date of sale was fixed on 13.11.2024. Thereafter petitioner filed an I.A. upon which an interim stay was granted by the Presiding Officer, DRT, Patna vide order dated 04.11.2024 not to confirm the sale by the respondent -Bank till



date of hearing. The respondent -Bank in its reply dated 19.11.2024 filed before the DRT, Patna admitted that all the secured assets including the subject property had been sold through e-auction in three lots in favour of respondent no. 8. Consequently, the DRT, Patna directed the petitioner to file amendment application for impleadment of auction purchaser as a party in the proceedings. Thereafter, the petitioner filed an application dated 23.12.2024 seeking impleadment of respondent no. 8. However, without passing any order on the said application and in absence of the petitioner on 04.02.2025 the DRT, Patna passed the impugned final order dismissing the S.A. thereafter on the very next day i.e. 05.02.2025 sale certificate was issued in favour of respondent no. 8.

7. Learned senior counsel for the petitioner argued that the entire action initiated by the respondent -Bank under the SARFAESI Act is illegal and vitiated in law for the reason that the mandatory statutory requirement under Section 26D of the SARFAESI Act has not been complied. Section 26D clearly mandates that no secured creditor shall be entitled to exercise any right under the SARFAESI Act unless the security interest is duly registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (for short



“CERSAI”). It is further argued that the alleged registration relied upon by the Bank is not only defective but misleading, inasmuch as the petitioner’s subject property has deliberately and mischievously been described in the name of the borrower though the same admittedly belongs to guarantor-petitioner and also the floor details have incorrectly been mentioned, clearly manifesting a conscious attempt to misrepresent the identity of the secured asset so as to prejudice the lawful right and interest of the petitioner. Such incorrect and false particulars render the registration non-est in the eye of law and consequently all proceedings taken pursuant thereto are void ab initio.

8. It has further been argued that the petitioner was ready and willing to liquidate the lawful outstanding dues from the very inception after due adjustment of the amount already realized by the respondent / Bank by sale of other secured assets. Despite such bona fide conduct, the respondent -Bank acted with undue haste and proceeded to auction the petitioner’s subject property without granting any reasonable or meaningful opportunity of redemption. Even while passing the impugned order dated 04.02.2025, the DRT, Patna completely failed to take into consideration the petitioner’s readiness and willingness to



clear the outstanding dues. It has further been submitted that Respondent No. 9 illegally filed a counter affidavit on behalf of respondent No. 8, a private limited company on 20.12.2024 without any board resolution and without being formally impleaded as a party. On 18.12.2024, the learned DRT, Patna had permitted the petitioner for impleadment of the auction purchaser, however, acting in collusion with the respondent -Bank the auction purchaser hurriedly filed an unauthorized counter affidavit even prior to formal impleadment. The DRT, Patna relied upon such unauthorized pleadings while dismissing the S.A No. 287 / 2024 and that too behind the back of the petitioner in her absence and without affording any reasonable opportunity of hearing in blatant violation of the principles of natural justice rendering the impugned order wholly unsustainable in law and the same is liable to be set aside. It is further submitted that respondent Bank has failed to disclose the sale price of the properties of the borrower sold by the respondent-Bank.

9. The petitioner had executed a registered lease deed dated 05.03.2024 much prior to the declaration of the loan account as NPA on 27.06.2024 and also prior to the issuance of the demand notice dated 29.06.2024 under Section 13(2) of the SARFAESI Act. It has been contended that the lawful posses-



sion of the secured asset was with the lessee and not with the petitioner and the lessee was having a legally enforceable right to continue in possession during the subsistence of the lease. Learned counsel relies upon the judgments of the Hon'ble Supreme Court rendered in **PHR Invent Educational Society vs. UCO Bank and Ors. reported in (2024) 6 SCC 579** and **Whirlpool Corporation v Registrar of Trademarks, Mumbai reported in (1998) 8 SCC 1.**

10. Per contra, learned counsel appearing on behalf of the respondents, at the outset, submits that the present writ petition is wholly misconceived, premature and not maintainable in law inasmuch as the petitioner has an efficacious and statutory alternative remedy available under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal, Allahabad against the impugned final order dated 04.02.2025 passed by the DRT, Patna in S.A. No. 287 of 2024. It has further been submitted that the entire SARFAESI proceedings have been undertaken strictly in accordance with law. The loan accounts were duly declared NPA on 27.06.2024 the demand notice under Section 13(2) dated 29.06.2024 was served upon the petitioner yet no objection or representation as contemplated under Section 13(3-A) was ever filed by the petitioner. Thereafter, possession



notice was issued and symbolic possession was taken in accordance with the statutory rules. The petitioner chose to remain silent throughout the statutory process and is now attempting to derail the lawful recovery proceedings by invoking the extraordinary writ jurisdiction.

11. Learned counsel further submits that after dismissal of S.A. No. 287 of 2024 the Sale Certificate dated 05.02.2025 has already been issued in favour of the auction purchaser. Consequently, the prayer for staying the confirmation of sale or issuance of sale certificate has become infructuous and is not maintainable. It is also submitted that the petitioner has approached this Hon'ble Court with unclean hands on account of the petitioner's lack of bona fides, suppression of material facts and deliberate misrepresentation of the record. The petitioner has taken self-contradictory stand throughout the writ petition. In paragraph no. 4 the petitioner unequivocally admits acceptance of liability, however, in paragraph no. 8 she pleads ignorance of the very loan accounts for which she admittedly stood as guarantor. Such contradictory pleadings are not accidental but deliberate and are intended to mislead this Hon'ble Court. It is an admitted position that the petitioner was regularly receiving a substantial amount of Rs. 35,00,000/- per annum till the year



2019 from the borrower, thereby actively enjoying the fruits of the very transaction which she now seeks to disown. The petitioner has also falsely pleaded that an application for impleadment of the auction purchaser was filed whereas the application dated 23.12.2024 was for impleading one Arti Kumari and not respondent no. 8. Such deliberate suppression and misrepresentation disentitles the petitioner from seeking any discretionary relief under Article 226 of the Constitution of India.

12. Learned counsel next submits that the allegation regarding non-registration of security interest under Section 26-D of the SARFAESI Act is wholly false and mischievous. The secured assets were duly registered with CERSAI and this fact stands reflected from Annexure -9/R appended to the Bank's counter affidavit filed before the DRT. The plea relating to the alleged lease is equally misconceived and legally untenable. The petitioner's further contention that the CERSAI registration is defective because it reflects the name of the borrower is equally misconceived and legally untenable. The prescribed CERSAI format mandates disclosure of the borrower's particulars even where the secured asset belongs to a guarantor that is why name of Amit Singh was there. The alleged lease deed is neither a valid registered document nor created prior to the mortgage. The



lessee has already initiated independent proceedings before the DRT in S.A. No. 287 of 2024 and has also filed a separate writ petition being CWJC No. 6517 of 2025. Therefore, the petitioner cannot espouse the cause of a third party who is not even a party to the present proceedings.

13. It has further been submitted that the auction process was conducted in a fair, transparent and competitive manner and fetched a price substantially higher than the reserve price. The subject property was put to auction at a reserve price of Rs. 1,78,00,000/- and was ultimately sold for Rs. 2,44,60,000/- i.e. approximately 40% higher thereby demolishing the allegations of undervaluation or mala fide.

14. Lastly, it has been submitted that it is a settled principle of law that where a statute provides a complete machinery for redressal of grievances, the High Court ought not to exercise jurisdiction under Article 226 of the Constitution of India particularly in matters arising out of recovery of public dues by banks and financial institutions under the SARFAESI Act. In support of his submissions, learned counsel relies upon the judgments of the Hon'ble Supreme Court passed in the case of **United Bank of India versus Satyawati Tandon reported in (2010) 8 SCC 110; Narayan Chandra Ghosh versus UCO Bank &**



Ors. reported in (2011) 4 SCC 548, Celir LLP versus Bafna Motors (Mumbai) Pvt. Ltd. reported in (2024) 2 SCC1 and Varimadugu Obi Reddy v. B. Sreenivasulu reported in (2023) 2 SCC 168.

15. Learned counsel for the auction purchaser argued that final order has been passed by the DRT and after passing of the final order sale certificate has been issued and as such as per the judgment in the case of Bafna Motors (supra) reported in (2024) 2 SCC 1 the High Court may not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India.

16. I have heard learned counsel for the parties and have carefully perused the materials available on record.

17. The SARFAESI Act, 2002 is a self-contained code providing a complete mechanism of redressal including remedies under Sections 17 and 18 of the Act. The Hon'ble Supreme Court in the case of United Bank of India versus Satyawati Tandon reported in (2010) 8 SCC 110 has held that High Court should ordinarily not entertain a petition under Article 226 of the Constitution of India 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 and other types of public money and the dues of banks and other



financial institutions. It has been held by the Apex Court that 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 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 of India, a person must exhaust the remedies available under the relevant statute.

18. The Supreme Court in **Rikhab Chand Jain v. Union of India & Ors., reported in 2025 Live Law (SC) 1129** in paragraph no. 12 relying upon the Constitution Bench judgment in *A.V Venkateswaran, Collector of Customs, Bombay versus Ramchand Sobhraj Wadhvani* reported in AIR 1961 SC 1506 has held that this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 may not be available.

19. In the present case, the petitioner has already availed the



statutory remedy under Section 17 of the Act and upon dismissal of S.A. No. 287 of 2024 an efficacious appellate remedy under Section 18 of the SARFAESI Act is admittedly available before the Debts Recovery Appellate Tribunal, Allahabad.

20. The contention of the petitioner that the security interest was not validly registered with CERSAI and that the registration contains incorrect particulars thereby vitiating the entire SARFAESI action and in view of Hon'ble Supreme Court judgment reported in PHR Invent Educational Society vs UCO Bank (2024) 6 SCC 579 and Whirlpool Corporation v Registrar of Trademarks, Mumbai the High Court can entertain the writ application is not acceptable. The judgment relied upon by the petitioner is not applicable in the facts of the case inasmuch as the respondent- Bank has produced documentary evidence showing registration of the secured asset with CERSAI. Section 26-D mandates registration of the security interest, not perfection of title. The secured asset of the borrower and the guarantor as per the format prescribed for registration is recorded as the asset of the borrower because liability of the borrower and the guarantor are joint.



21. With regard to the violation of principles of natural justice, this Court finds that the petitioner was duly aware of the proceedings before the DRT, Patna and had actively participated therein. The grievance relates to filing of pleadings by the auction purchaser prior to impleadment, non-deciding of the impleadment application and issuance of sale certificate are matters which can be effectively agitated before the appellate forum under Section 18 of the Act.

22. In **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd.** reported in (2024) 2 SCC 1 after surveying the entire law on interference with auctions by placing reliance upon several judgments, the Supreme Court has categorically held in paragraph 91 as under:-

“Thus, what is discernible from the above is that it is the duty of the courts to zealously protect the sanctity of any auction conducted. The courts ought to be loath in interfering with auctions, otherwise it would frustrate the very object and purpose behind auctions and deter public confidence and participation in the same.”

23. In **Celir LLP Versus Sumati Prasad Bafna and Others.**



reported in 2020 SCC Online SC 3727 in paragraph no. 218 it has been categorically held that:-

“Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule which does not have any fundamental procedural error does not take away the foundation of authority for such proceeding. In such cases, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity.”

24. This Court further finds that the auction has already been concluded and the Sale Certificate have been issued on



05.02.2025 in favour of respondent no. 8, the rights of a bona fide third-party purchaser have crystallised and attained finality. Any interference at this stage would frustrate the very object of the recovery legislation, undermine public confidence and deter participation in auctions without exhaustion of the statutory appellate remedy would seriously prejudice third-party rights and defeat the very object of the SARFAESI Act which mandates expeditious recovery of public funds.

25. Accordingly, this Court holds that the present writ petition is a clear attempt to circumvent the statutory appellate remedy under Section 18 of the SARFAESI Act and none of the grounds urged disclose any exceptional circumstance warranting interference under Article 226 of the Constitution of India.

26. With the aforesaid observation and direction, the present writ application is disposed.

(Anil Kumar Sinha, J)

Praful/-

AFR/NAFR	AFR
CAV DATE	25-11-2025
Uploading Date	20-01-2026
Transmission Date	N.A.

