

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1552 of 2018

HDFC Bank Limited, Bariatu Road, Ranchi, through Authorized
 Signatory Shri Arup Srivastava Petitioner

Versus

State Bank of India, Hatia Branch, Ranchi through its Branch Manager
 & Ors. Respondents

With

W.P.(C) No. 2314 of 2018

HDFC Bank Limited, Bariatu Road, Ranchi, through the Deputy Legal
 Manager- Shri Arup Srivastava Petitioner

Versus

State Bank of India, Hatia Branch, Ranchi & Ors.... Respondents

With

W.P.(C) No. 4875 of 2018

SREI Equipment Finance Limited having Branch Office at Ratu Road,
 Ranchi, through its authorized signatory Mr. Satyajit Mukherjee

... .. Petitioner

Versus

State Bank of India, Mumbai through its Chairman & Ors.

... .. Respondents

With

W.P.(C) No. 4895 of 2018

HDFC Bank Limited, Bariatu Road, Ranchi, through the Deputy Legal
 Manager- Shri Arup Srivastava Petitioner

Versus

State Bank of India, Hatia Branch, Ranchi & Anr. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners	: Mr. Indrajit Sinha, Advocate Mrs. Sneh Singh, Advocate Ms. Sonal Jaiswal, Advocate [In WP(C) Nos. 1552/18, 2314/18 & 4895/18] Mr. Kaushik Sarkhel, Advocate [In WP(C) No. 4875 of 2018]
For the Respondent-SBI	: Mr. Rajesh Kumar, Advocate Mr. Amit Kumar, Advocate
For the Respondent-CBI	: Mr. Prashant Pallav, D.G.S.I Mr. Bajrang Kumar, AC to D.G.S.I
For the Respondent No. 5	: Mr. Mohan Kumar Dubey, Advocate

09/12.12.2022 It has been reported by the office that the notices issued to the respondent nos. 4 and 5 of W.P.(C) No. 2314 of 2018 through ordinary process have validly been served to them.

The service of notice upon the said respondents is thus complete.

However, no Vakalatnama has been filed on behalf of the

said respondents.

I.A. No. 7112 of 2021 in W.P.(C) No. 4895 of 2018

No one appears on behalf of the respondent no. 2 in this case.

The present interlocutory application has been filed on behalf of the respondent no. 1 – State Bank of India, Hatia Branch, Ranchi for vacating the interim order dated 11.10.2018 passed in the said writ petition.

Heard learned counsel for the petitioner as well as the respondent no. 1.

Reference may be made to order dated 11.10.2018 which reads as under:

The present writ petition has been filed for issuance of direction upon the respondent no.1- State Bank of India, Hatia Branch, Ranchi to give possession of the vehicles financed by the petitioner in favour of the respondent no.2 which have wrongfully/illegally been detained by it under the blanket order dated 22.03.2018 passed by the Presiding Officer, Debts Recovery Tribunal (DRT), Ranchi in O.A. No. 608 of 2017. The petitioner has also prayed for quashing the E-auction notice dated 14.09.2018 whereby the vehicles financed by the petitioner-Bank have been sought to be auctioned on 15.10.2018. The petitioner has further prayed for restraining the respondents from selling the vehicles which have been financed by the petitioner-Bank over which it has the first charge.

Learned counsel for the petitioner while assailing the action of the respondent no. 1 submits that the respondent no. 1 has misconstrued the order dated 22.03.2018 passed by the DRT, Ranchi in O.A. No. 608 of 2017. In paragraph-48 of the said order, it has been clearly observed that the State Bank of India (respondent no. 1 herein) would be entitled to seize and sell the vehicles financed by HDFC/Axis/any other institution/Banks after financiers' charge is satisfied. Admittedly, since the petitioner-Bank has the charge over the vehicles, it is not legally permissible to put the said vehicles to auction sale by the respondent no.1 in haste. It is further submitted that pursuant to the order passed by the DRT, Ranchi in O.A. No. 608 of 2017, no recovery proceeding has been initiated in accordance with the provisions of the Recovery of Debts and Bankruptcy Act, 1993. If the impugned auction notice dated 14.09.2018 (Annexure-10 to the writ petition), so far the petitioner's vehicles are concerned, is not stayed, an irreparable pecuniary loss would be caused to the petitioner.

Mr. Rajesh Kumar, learned counsel appearing

for the respondent no.1, submits that in the earlier communication exchanged between the petitioner and the respondent no.1, the petitioner failed to establish the lawful charge over the vehicles being put to auction sale due to which the respondent no.1 proceeded to issue auction notice dated 14.09.2018. However, learned counsel for the respondent no. 1 prays for three weeks' time to file detailed counter affidavit.

Having heard the learned counsel for the parties and looking to the issue raised in the present writ petition, the respondent no.1 is directed not to proceed in pursuance of the auction notice dated 14.09.2018 (Annexure-10 to the writ petition), so far as the same relates to the vehicles hypothecated before the petitioner, till the next date fixed.

Put up this case on 06.11.2018 under the heading "For Admission".

Mr. Rajesh Kumar, learned counsel for the respondent no. 1, submits that considering the involvement of huge public money amounting to Rs. 52.63 crores which was siphoned by M/s Bhanu Construction & Associates, the respondent-Bank in process of recovery of the said sum of money from the Certificate Debtors took various steps and accordingly, pursuant to the order of the Debts Recovery Tribunal, the respondent-Bank took possession of vehicles in question which are hypothecated before the writ petitioner and published the auction notice dated 14.09.2018 which was kept in abeyance by the order of this Court dated 11.10.2018.

It is further submitted that the respondent-Bank has taken services of M/s Kiran Associate's which is continuously charging very high amount from the respondent-Bank for keeping the vehicles intact and safe. Bills as raised by M/s Kiran Associate's are annexed with this application. Due to the interim order dated 11.10.2018 passed by this Court, the auction procedure is kept in abeyance for last four years and the value of the vehicles is depreciating and their conditions are deteriorating. Under the said circumstance, the order dated 11.10.2018 may be vacated and the respondent no. 1 may be permitted to go ahead with the auction sale and thereafter, the sale proceed of that auction be kept intact, subject to the outcome of the present writ petition.

Considering the facts and circumstance of the case, the

interim order dated 11.10.2018 whereby the respondent no. 1 was directed not to proceed in pursuance of the auction notice dated 14.09.2018, so far as the same relates to the vehicles hypothecated before the petitioner is hereby vacated. The respondent no. 1 is at liberty to continue with the auction process for sale of the commercial vehicles (trucks) in question. However, the respondent no. 1 shall keep the sale proceed in a separate fixed deposit, which shall be subject to the outcome of the present writ petition.

The present interlocutory application stands disposed of.

I.A. No. 7111 of 2021 in W.P.(C) No. 4875 of 2018

No one appears on behalf of the respondent no. 6 in this case.

The present interlocutory application has been filed on behalf of the respondent – State Bank of India for vacating the interim order dated 12.10.2018 passed in the said writ petition.

Heard learned counsel for the petitioner as well as the respondent – State Bank of India.

Reference may be made to order dated 12.10.2018 which reads as under:

I.A. No. 9534 of 2018

“The present interlocutory application has been filed on behalf of the petitioner for staying the e-auction notice dated 14.09.2018 published in the local newspaper by the respondent nos. 1 to 4 with respect to the vehicles/machines listed at Sl. No. 12 to 17 since the said vehicles have been financed by the petitioner company and has the first charge over the same as has been admitted by the respondent nos. 1 to 4 in O.A. No. 608/2017 before the Debt Recovery Tribunal, Ranchi. An alternative prayer has been made for issuance of direction upon the respondents not to finalise the e-auction process or to maintain the money obtained in the auction in separate account till the disposal of the present interlocutory application.

The learned counsel for the petitioner while assailing the action of the respondent-Bank submits that the respondent-Bank has misconstrued the order dated 22.03.2018 passed by the DRT, Ranchi in O.A. No. 608 of 2017. In paragraph-48 of the said order, it has been clearly observed that the State Bank of India would be entitled to seize and sell the vehicles financed by HDFC/Axis/any other institution/Banks after financiers' charge is satisfied. Admittedly, since the petitioner-Bank has the charge over the vehicles,

it is not legally permissible to put the said vehicles to auction sale by the respondent-Bank in haste. It is further submitted that pursuant to the order passed by the DRT, Ranchi in O.A. No. 608 of 2017, no recovery proceeding has been initiated in accordance with the provisions of the Recovery of Debts and Bankruptcy Act, 1993. If the impugned auction notice dated 14.09.2018 (Annexure-6 to the writ petition), so far the petitioner's vehicles are concerned, is not stayed, an irreparable pecuniary loss would be caused to the petitioner.

Mr. Rajesh Kumar, learned counsel for the respondent-Bank, submits that in the earlier communication exchanged between the petitioner and the respondent-Bank, the petitioner failed to establish the lawful charge over the vehicles being put to auction sale due to which the respondent-Bank proceeded to issue auction notice dated 14.09.2018. However, the learned counsel for the respondent-Bank prays for three weeks' time to file detailed counter affidavit.

Having heard the learned counsel for the parties and looking to the issue raised in the present writ petition, the respondent-Bank is directed not to proceed in pursuance of the auction notice dated 14.09.2018 (Annexure-6 to the writ petition), so far as the same relates to the vehicles hypothecated before the petitioner, till the next date fixed.

I.A. No. 9534 of 2018 stands disposed of.

W.P.(C) No. 4875 of 2018

Put up this case along with W.P.(C) No. 4895 of 2018."

Mr. Rajesh Kumar, learned counsel for the respondent – State Bank of India, submits that considering the involvement of huge public money amounting to Rs. 52.63 crores which was siphoned by M/s Bhanu Construction & Associates, the respondent-Bank in process of recovery of the said sum of money from the Certificate Debtors took various steps and accordingly, pursuant to the order of the Debts Recovery Tribunal, the respondent-Bank took possession of vehicles in question which are hypothecated before the writ petitioner and published the auction notice dated 14.09.2018 which was kept in abeyance by the order of this Court dated 12.10.2018.

It is further submitted that the respondent-Bank has taken services of M/s Kiran Associate's which is continuously charging very high amount from the respondent-Bank for keeping the vehicles intact and safe. Bills as raised by M/s Kiran Associate's are annexed with this

application. Due to the interim order dated 12.10.2018 passed by this Court, the auction procedure is kept in abeyance for last four years and the value of the vehicles is depreciating and their conditions are deteriorating. Under the said circumstance, the order dated 12.10.2018 may be vacated and the respondent – State Bank of India may be permitted to go ahead with the auction sale and thereafter, the sale proceed of that auction be kept intact, subject to the outcome of the present writ petition.

Considering the facts and circumstance of the case, the interim order dated 12.10.2018 whereby the respondent – State Bank of India was directed not to proceed in pursuance of the auction notice dated 14.09.2018, so far as the same relates to the vehicles hypothecated before the petitioner is hereby vacated. The respondent – State Bank of India is at liberty to continue with the auction process for sale of the commercial vehicles (trucks) in question. However, the respondent – State Bank of India shall keep the sale proceed in a separate fixed deposit, which shall be subject to the outcome of the present writ petition.

The present interlocutory application stands disposed of.

W.P.(C) No. 1552 of 2018
with
W.P.(C) No. 2314 of 2018
with
W.P.(C) No. 4875 of 2018
with
W.P.(C) No. 4895 of 2018

Put up these cases under the heading "For Admission" after four weeks.

(Rajesh Shankar, J.)

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