

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24303 of 2018

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Bhirgu Nath Sharma S/o Late Ramdev Mistri, R/o Village Ujani, PO Maniya Mor, P.S. Naugachia, Dist.-Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate cum collector, Dist.-Bhagalpur
3. The Sub-Divisional Officer cum Certificate Officer, Naugachia, Dist.-Bhagalpur
4. The Bihar Gramin Bank, through the Chairman, Head Office, Gramin Bank Opp. North HFCL Gate, N.H.31, Begusarai, Bihar-851115
5. The Chairman, Biharh Gramin Bank, Begusarai, Bihar
6. The Regional Manager cum Authorized Officer, Bihar Gramin Bank, Regional Office Radha Rani Singh Road, Adampur, Bhagalpur
7. The Branch Manager, Bihar Gramin Bank, Naugachia, Dist.-Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Sinha
For the BanK	:	Mr.Ranjeet Kumar Pandey
For the Respondent/s	:	Mr.Raghwendra Kumar, SC-22

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 22-08-2025

1. The writ petition is filed for the following reliefs:-

“(a) For issuance of writ of certiorari, quashing notice to the borrower under sec 13 (2) SARFAESI Act 2002 (petitioner) dated 27.03.2017 issued under the signature of the authorized officer



of the Respondent bank as the same is bad in law as well as fact.

(b) For further quashing possession notice dated 17.06.2017 whereby the mortgaged property of the borrower M/s Maa Jagdamba Synthetic, Prop: Sri Bhirgunath Sharma was taken possession under section 13(4) read with Rule 8 of the SARFAESI Act, 2002

(c) For further quashing notice dated 19.10.2018 issued under the signature of the Authorized Officer of the respondent bank for auction of the property whereby the respondent bank u/s 13 (4) (d) and the 6(2) of the SARFAESI, Act 2002, issued letter to the petitioner for sale of mortgaged property of the petitioner and 27.12.18 informing him that the same has been published in newspaper on 18.11.2018.

(d) For issuance of writ of mandamus commanding the concerned authorities to stay the auction sale of the mortgaged property which is the dwelling



house of the petitioner, published in daily newspaper dated 18.11.2018 whereby 27.12.2018 has been fixed as date of auction sale of the mortgaged property of the petitioner.

(e) For further directing the concerned authorities to enquire into fraud played on part of the bank in disbursement of loan as well as adjustment of account.”

2. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondent.

3. 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 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.

4. 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.

5. 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.

6. Therefore, this Court is of the considerable view that the Writ petition is not maintainable when an alternative and effective remedy is available to the petitioners. 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.

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

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2025
Transmission Date	

