NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3248 of 2016

1. Smt. Kusum Jain W/o Madan Chand Jain, Aged About 75 Years, R/o Plot No 321, Vidya Sagar General Sales Azad Market Risali, Bhilai, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector Durg, District Durg Chhattisgarh

2. Central Bank Of India, Through Managing Director, H.O. Chandramukhi, Nariman Point Mumbai 400021

3. Central Bank Of India, Through Branch Manager, Central Bank Of India, Opposite Government Polytechnic College, G.E. Road, Durg Chhatisgarh

4. Arvind Sharma Tehsildaar Durg, District Durg Chhattisgarh

5. Mannulal Kosre, Maal Jamadaar, Tehsil Office, Durg, District Durg Chhattisgarh

6. Superintendent Of Police, Durg, District Durg Chhattisgarh

---- Respondent

For Petitioner — Shri Anurag Jha & Shri C.B. Kesharwani, Advocates

For Respondent/State — Shri Ramakant Mishra, Dy. Adv. General

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Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/12/2016

1. Petitioner's son obtained financial assistance from the respondents No.2 & 3 Bank for opening the grocery shop. In the said loan transaction, the petitioner was a guarantor. She had mortgaged the residential premises bearing Khasra No.321, area of 780 sq.ft., situated near Rishali Azad Market, Rishali, Bhilai, Durg.

2. Consequent to the borrower's failure to repay the debt, proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest *Act*, 2002 ('the Act, 2002' in short) was initiated and eventually the District Magistrate passed the order on 24.11.2014 in exercise of powers under Section 14 of the Act, 2002 to obtain physical possession of the mortgaged property.

3. It is the stand of the petitioner that when the mortgaged property was put to auction the total outstanding was at Rs.7,00,000/- approx., whereas the bid amount was Rs.19,00,000/- approx., therefore, she is entitled to the remaining amount of Rs.12,00,000/- approx.

4. Learned counsel for the petitioner would argue that on 21.11.2016 the petitioner and her son had gone to the hospital

and in the meanwhile the Tahsildar broke open the lock put by the petitioner and put his own lock over the front door of the house without giving any opportunity of hearing to the petitioner to remove her belongings including medicine. The petitioner is ailing lady being aged about 75 years.

5. At this juncture, Shri Ramakant Mishra, learned Deputy Advocate General appearing for the State, would submit that the statement made by the learned counsel for the petitioner shall be verified and if found correct, the Tahsildar deserves a direction for allowing the petitioner to take out her belongings from the house in question.

6. Considering the fact that the petitioner has not assailed the proceedings initiated by the Bank under the Act, 2002 or the final order passed by the District Magistrate under Section 14 directing delivery of possession and her only prayer appears to be for allowing her to remove the belongings and for payment of the balance amount by the Bank after retaining the exact outstanding on the date of obtaining possession of the house in question, ends of justice would be served if the petition is disposed of with the following directions/observations :

a) The District Magistrate shall direct the said Tahsildar who has put on lock over the house belonging to the petitioner to open the same in presence of the petitioner and the panch witnesses and allow the petitioner to remove the belongings, if any, lying inside the house in question. The Tahsildar shall, thereafter, put the lock as it was.

b) The petitioner shall move a representation before the respondent Nos.2 & 3 Bank within a period of three (3) weeks from today seeking refund/return of the excess amount, which the Bank has obtained at the time of auction of the mortgaged property. The excess amount, if any, be paid back to the petitioner in the form of demand draft, in presence of witnesses, within a period of one month from the date of submission of representation by the petitioner. If the Bank considers that the petitioner is not entitled to any refund, it shall pass a speaking order and communicate the same to the petitioner within the same period.

c) It will remain open for the petitioner to take recourse to remedies available under law.

7. In view of the above, the writ petition stand disposed of.

Sd/-
Judge
Prashant Kumar Mishra

Gowri