HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3577 of 2019

1. Mrs. Meena Agrawal W/o Late Shri Vipin Kumar Aged About 61 Years R/o B-197, Street 7, Smriti Nagar, Bhilai, District Durg Chhattisgarh

2. Mr. Pallav Agrawal S/o Late Shri Vipin Kumar Aged About 39 Years R/o B-197, Street 7, Smriti Nagar, Bhilai, District : Durg, Chhattisgarh **--- Petitioners**

Versus

1. UCO Bank through Its Chief Manager, Having Its Office at Civic Centre, Bhilai 462006, District : Durg, Chhattisgarh

2. Authorized Signatory Uco Bank, Having Its Office At Civic Centre, Bhilai District Durg Chhattisgarh.462006, **--- Respondents**

For the Petitioners : Mr. B. P. Sharma & Mr. Manaynath Thakur, Advocates

For the Respondent : Mr. Ravindra Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

03-10-2019

1. The grievance of the petitioners is that the petitioners have availed the loan of Rs.55 lakhs under the term loan account on 27.06.2016 from the respondent Bank. It is submitted that the immoveable property was mortgaged as a security of loan. During the continuation of loan, on a different head further loan of Rs. 10 lakhs under Pradhan Mantri MUDRA Yojna, was sanctioned by the Bank vide Annexure P-2 which was a sponsored scheme by the State/Union. It is stated that for such a loan it has a different and distinct account and the mortgage cannot be amalgamated as the sanction advice also speaks that no collateral security exists for the second loan. It is stated that the petitioners however have been served with a notice on 16.07.2019 u/s 13(2) of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short "SARFAESI Act, 2002") whereby for both the loans the mortgaged property i.e., the house was being chased for attachment.

2. It is contended that the loan of Rs. 55 lakhs on term loan account and another loan granted under the Pradhan Mantri MUDRA Yojna are two different and distinct loans and they could not be amalgamated and for recovery of the outstanding loan in the Pradhan Mantri Mudra Yojgar Yojna, the house cannot be attached.

3. Learned counsel for the respondent on instructions would submit that by way of recovery measures, the attachment of mortgaged property would not be carried u/s 13(4) of the Act, 2002. A perusal of the document would show that for a term loan account, the house was mortgaged as security of loan whereas for the loan under the Pradhan Mantri Mudra Rojgar Yojna, no collateral security was created. The said loan was sanctioned under a different and distinct head of State sponsored Scheme, therefore, since it has a different mode of recovery under the provisions of the Chhattisgarh Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam 1987, the attachment of the mortgaged property could not be made by implication of section 13(2) of the SARFAESI Act, 2002. Therefore, it is made clear that by way of measures for recovery of term loan, the Bank may proceed under the SARFAESI Act, 2002. However, in respect of the loan availed under the Pradhan Mantri Mudra Yojna, the house property cannot be the subject of attachment as both the loans are being distinct and different, therefore, the property cannot be amalgamated.

4. Learned counsel for the petitioner further submits as the

petitioners are running Tiffin services, it would not be possible for her to repay the entire loan amount, therefore, the petitioners may be granted benefit of instalments. The said request can be made to the respondent/Bank and if such request is made, the Bank may consider the same sympathetically. In respect of the loan availed under the Scheme, the respondent Bank may proceed in accordance with the Act, 1987.

5. With the above observations, this writ petition stands finally disposed of.

Sd/-

GOUTAM BHADURI
JUDGE

Rao