IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27939 of 2013

Puspajit Mohapatra .... ***Petitioner***

Mr. Amit Prasad Bose, Advocate

-versus-

Regional Director, Reserve Bank of India, Odisha Region, Bhubaneswar, District-Khurda and Others .... ***Opp. Parties***

None for the Bank/O.P. Nos.2 and 3
Ms. Arundhati Sahu, Proxy Counsel
on behalf of Mr. Arun Kumar Mishra, Advocate
(for Opposite Party No.4/Auction Purchaser)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No. **23.09.2022**

10. This matter is taken up through virtual/physical mode.

1. Petitioner-Puspajit Mohapatra is the proprietor of M/s. Total Solutions which had availed a C.C. Loan facility for a sum of Rs.50 lakhs from Bank of India, Jayadev Vihar, Bhubaneswar/O.P. Nos.2 and 3 in the year 2005 for augmenting his business in the agency and sale of Mobile phones. In the year 2007 upon request of the petitioner the loan facility was bifurcated into two, i.e., a Term Loan of Rs.25 Lakhs and C.C. facility to the tune of Rs.30 Lakhs with addition of Rs.5 Lakhs to the C.C. facility. Due to financial indiscipline, both the loan accounts were classified as NPA with effect from 30.11.2007. The Bank issued a demand notice dated 04.01.2008 recalling the outstanding liabilities on that date to the tune of Rs.57,16,017.81. The demand notice was also served upon the two guarantors, i.e., petitioner himself and another guarantor Shri Ashok Kumar Das since petitioner as a guarantor had suffered equitable mortgage of three of his immovable properties and Shri Ashok Kumar Das had suffered an equitable mortgage of one Flat towards collateral securities.

2. The Bank/Secured Creditor apart from initiating the recovery process under the SARFAESI Act, 2002 had also filed an O.A. No.296 of 2009 before the Debts Recovery Tribunal, Cuttack claiming the entire outstanding liabilities. The said O.A. has culminated into an *ex parte* order on 15.07.2010. The SARFAESI proceedings have culminated into sale of two of the mortgaged properties (out of three) of the petitioner in the auction sale conducted on 11.01.2009 in favour of Sangita Tibrewal/O.P. No.4 and Neela Madhab Das/O.P. No.5 respectively. Pursuant to the issuance of sale certificate on 06.02.2009 even the Sale Deeds have been executed on 28.03.2009 bearing No.2234 of 2009 in favour of O.P. No.4 and another dated 03.05.2010 bearing No.9543 of 2010 in favour of O.P. No.5.

3. It is pertinent to mention that before the date of auction fixed for 21.01.2009, on the request dated 13.01.2009 of the other guarantor-Shri Ashok Kumar Das, his security was released upon deposit of Rs.12.20 lakhs; and the Title Deeds of his Flat were returned to the said guarantor on 20.01.2019. The petitioner is also stated, as per the stand of the Bank to have made a request on 20.01.2009 for deferring the auction process *qua* his collateral mortgaged properties on a promise to pay the remaining balance on a quarterly basis.

4. Be that as it may, the petitioner after almost five years of the aforesaid proceedings filed the present writ petition challenging the aforesaid Sale Deeds in favour of O.P. Nos.4 and 5 on the grounds of violation of the mandatory provisions of the SARFAESI Act.

5. This Court while issuing notice vide order dated 20.12.2013 passed the following interim order in the Misc Case No.24799 of 2013:

> **"**Issue notice as above.
>
> Accept one set of process fees.
>
> As an interim measure, this Court directs that status quo, as on today, shall be maintained till 31.01.2014 subject to petitioner depositing Rs.11,00,000/- (eleven lakh) in shape of Account Payee Bank Draft before the Registrar (Judicial) within a month from today. On being deposited, the Registrar (Judicial) shall encash the Account Payee Bank Draft and

> keep the amount in short term deposit in any nationalized bank.
>
> Urgent certified copy of this order be granted on proper application."

6. Upon notice, the Bank and O.P. No.4 have filed their respective replies. O.P. No.5 remains to be served till now.

7. At the time of hearing today, learned counsel for the petitioner realizing that the proper remedy for ventilating such a grievance would be the forum of D.R.T. by filing an application under Section 17 of the SARFAESI Act, 2002, he has prayed for permission to withdraw the present writ petition to enable his client to seek his available remedies in accordance with law. He has further prayed for a direction to the Registry to ensure the refund of the amount deposited along with accrued interest in compliance of the aforesaid interim order dated 20.12.2013 passed by this Court. He states that the instant prayer is being made based on an affidavit dated 23.09.2022 executed by the petitioner. A copy of the application dated 23.09.2022, though not numbered along with the affidavit dated 23.09.2022 is retained on record as Annexure Mark 'A'. Registry to place the same at the proper place and paginate the Paper Book.

Learned counsel for the O.P. No.4/Auction Purchaser has no objection to such withdrawal.

8. In view of the aforesaid developments, the writ petition is dismissed as withdrawn with liberty to the petitioner to seek his available remedies in accordance with law. Registry is also directed to do the needful *qua* the refund of the amounts deposited.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK September 23rd, 2022
Cuttack