

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.1746 of 2011

Vimal Sharma **Petitioner**

Mr. Santanu Kumar Sarangi, Advocate

-versus-

Orissa State Financial **Opp. Parties**

Corporation, OMP Square,

Cuttack-3 represented

through its Managing

Director and another

Mr. Bijoy Kumar Dash, Advocate for OSFC

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN

ORDER (ORAL)
05.04.2022

Order No.

- 05.** **1.** This matter is taken up by virtual/physical mode.
- 2.** The brief facts of the case are that the Petitioner i.e. Vimal Sharma stood as a guarantor to the loan availed by M/s. Tirupati Spices from the Opposite Party No.1 i.e. Orissa State Financial Corporation (OSFC) to the tune of Rs.16,40,000/- as a term loan and Rs.8,00,000/- as NEF loan by mortgaging a property belonging to his wife on 21.01.2002.
- 3.** The Opposite Part No.1- OSFC introduced an One Time Settlement Scheme (OTS-2007) dated 17.03.2007 whereby the loan accounts were agreed to be settled by

payment of Rs.32,15,500/- vide letter dated 18.11.2008.

4. It is the case of the Petitioner that the debtor i.e. M/s. Tirupati Spices didn't show any interest in payment of loan. Moreover, the Guarantor-Petitioner has paid Rs.13,08,000/- to settle the loan account as under OTS-2007.

5. In the meantime, the OP No.1-OSFC issued sale notice for auction of the property of the debtor i.e. M/s. Tirupati Spices. However, as no buyer was attracted in the auction, the OP No.1/creditor vide letter dated 19.01.2011 decided to auction the property of the guarantor-Petitioner on 31.01.2011 by invoking Section 29 of State Financial Corporation Act, 1951 (SFC).

6. Aggrieved by the Sale-notice dated 19.01.2011, advertised in the Dharitri Newspaper on 20.01.2011, the Petitioner had approached this Court to quash the said notice and also to quash the proceedings carried out against the Petitioner.

7. The case was taken up by this Court which vide order dated 17.02.2011 observed as follows:-

“Issue notice to the opposite parties by registered post with A/D requisites for which shall be filed by tomorrow.

Auction in respect of the collateral security of M/s. Tirupati Spices as mentioned at sl.no.14 of the sale notice dated 19.1.2011 (Annexure-4) issued by the Orissa State Financial Corporation may be held but the

same shall not be confirmed without leave of this Court.”

The property remained unsold due to inadequate offer in the auction conducted on 31.01.2011.

8. The matter came up for hearing today and the Petitioner contended that the law regarding the application of Section 29 and Section 31 of the State Financial Corporation Act, 1951 (SFC) is well-settled. The Supreme Court of India in the case of **Karnataka State Financial Corporation v. N. Narasimahaiah and Others**, (2008) 5 SCC 176 has clearly held that Section 29 of the SFC cannot be applied against the surety/guarantor and the correct approach is to proceed under Section 31 of SFC.

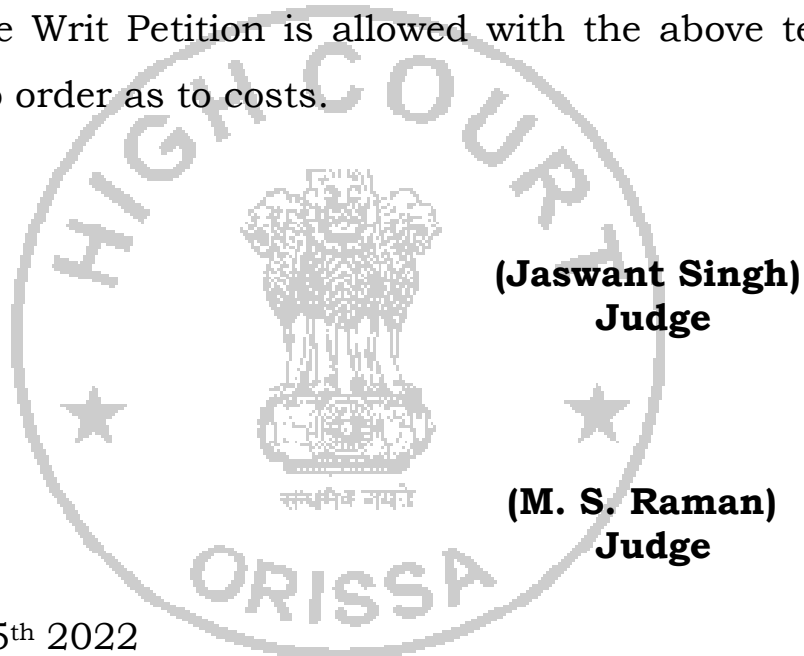
9. The decision in N. Narasimahaiah was re-iterated in the case of **Subhranshu Sekhar Padhi v. Gunamani Swain and Others** (2014) 12 SCC 368 which further explained that according to the procedure under Section 31 of SFC, the State Financial Corporation has to apply for Courts approval before disposing/selling of the property of the guarantor whereas the State Financial Corporation can directly sale the property of the debtor under Section 29 of SFC.

10. The counsel for the Opposite Parties/borrower did not dispute to the points raised by the counsel for the Petitioner and requested to approach the appropriate forum. However, they argued that the due amount of

the borrower as on 31.12.2021 stands at Rs.3,53,54,000.00/-.

11. In view of the above settled point of law, the sale-notice/impugned notice dated 19.01.2011 of the OSFC-OP No. 1 is hereby quashed due to non-approval from Court. However, the OP No.1 is at liberty to carry out proceedings against the Petitioner under Section 31 of the SFC in accordance with law.

12. The Writ Petition is allowed with the above terms with no order as to costs.



(Jaswant Singh)
Judge

(M. S. Raman)
Judge

April 5th 2022
Cuttack

AKPradhan