

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9860 of 2005

Ashok Kumar Agarwal

....

Petitioner

Mr. Gautam Mishra, Senior Advocate

-versus-

***Orissa State Financial Corporation
and others***

....

Opposite Parties

Mr. B.K. Dash, Advocate

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K. PATTANAİK

ORDER

09.02.2022

Order No.

08. 1. The present petition is by the son of the person who stood as guarantor for the loan borrowed by Opposite Party No.3 from Opposite Party No.1-Orissa State Financial Corporation (OSFC). The Petitioner approaches this Court questioning the order dated 25th July 2005 and 29th July 2005 of the OSFC invoking Section 29 of the State Financial Corporation Act, 1951 (SFC Act) and proceeding to put the residential premises of the Petitioner to sale by way of public auction. This Court by an interim order dated 9th August 2005 restrained the OSFC from disturbing the possession of the Petitioner over the premises in question and that interim order is continuing since.

2. It is a settled position in law that Section 29 of the SFC Act cannot be invoked by the OSFC to proceed against the properties of third parties like guarantors/sureties. The decision in ***Karnataka State Financial Corporation v. N. Narasimahaiah (2008) 5 SCC 176*** was reiterated by the Supreme Court in

Subhranshu Sekhar Padhi v. Gunamani Swain and others (2014) 12 SCC 368. It was explained by the Supreme Court of India that in order to proceed against the properties of the guarantors, the procedure under Section 31 of the SFC Act would have to be followed. What Section 31 of the SFC Act requires is for SFC to apply to the Court prior to bringing to sale the property of guarantor whereas under Section 29 of the SFC Act, it can straightaway proceed to bring to sale the property mortgaged with the SFC.

3. In that view of the matter, the impugned letters/ orders dated 25th July and 29th July 2005 of the OSFC are hereby quashed. Nevertheless, it will be open to the OSFC to follow the procedure under Section 31 of the SFC Act in accordance with law.

4. The writ petition is allowed in the above terms with no order as to costs.

5. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin