IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2246 of 2010

Naba Kishore Mishra & others .... ***Petitioners***

Mr. Akshaya Kumar Sahoo, Advocate

-versus-

Branch Manager, Canara Bank, Bhubaneswar & another .... ***Opp. Parties***

None

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER

Order No. **12.01.2022**

18. **1.** This matter is taken up through hybrid mode.

2. The writ petition under Article 226 of the Constitution of India has been filed by the petitioners, petitioner no.1 being guarantor of the loan taken in the name of a firm, M/s. Sivananda Emporium, the petitioner nos.2 and 3 being the partners of the said firm. The petitioner-guarantor had mortgaged immovable property for the loan amount of Rs.3,00,000/- borrowed from the opposite parties-Bank. It is further stated that the petitioner's firm suffered financial crises, resulting in financial indiscipline in servicing the loan account, which was declared as Non Performing Asset (NPA) on 01.04.2007. Thereafter, for an outstanding liability of Rs.3,00,346/-, the opposite party-Bank through their counsel, sent notice to the petitioner no.1 : guarantor, to discharge the guaranteed liability dated 24.01.2008 (Annexure-1 to the writ petition). Thereafter, the notice dated 27.02.2008 (Annexure-2) under Section 13(2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act,2002 ('the Act, 2002' for short) was issued to the guarantor by the Authorized Officer of the opposite party-Bank. Thereafter the notice dated 19.08.2008 (Annexure-3) was issued under Section

13(4) of the Act, 2002 read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, i.e., the notice for sale of the secured assets with a reserve price of Rs. 4,59,000/-.

3. In the writ petition, it has been alleged that the statement of account (Annexure-4) contains the amount for News-Paper publication of the sale notice, in Oriya as well as English daily amounting to Rs.28,195/- and Rs.36,401.50, respectively and it is contended that the said amount is not recoverable from the petitioner. It is further contended by the petitioners that Rs.53,672.50 towards unpaid interest, as included in the account statement, is also non-recoverable from the borrower/guarantors.

3. A counter affidavit has been filed on behalf of the bank-opposite parties, stating therein that the unapplied interest from 01.04.2007 till 20.03.2008 comes to Rs.53,672.50 kept in the "mirror account", as the mirror account was maintained as per the guidelines of Reserve Bank of India (RBI). According to the said RBI guidelines, once the account of the petitioners/borrowers was classified as NPA the interest payable by borrower was to be reflected in the 'mirror account'. The Bank has enclosed to the counter affidavit, the bill raised by the advertising agency, which is the exact amount disclosed in the accounts statement as at Annexure-4.

4. A rejoinder affidavit has been filed by the petitioner raising some disputed facts regarding the date of declaration of the NPA, the mode of calculation of interest and averments to the effect that the statements made in the counter affidavit are false.

5. Considering the pleadings of the parties, the averments made in the writ petition, counter affidavit on behalf of opposite parties and the rejoinder affidavit filed by the petitioner, it is apparent that the petitioners have not disputed the factual assertions in the counter affidavit enclosing the copy of the bill raised by the advertising agency, nor it has denied that the account was declared as NPA with effect from 01.04.2007 and the interest amount was to be calculated and affected in the "mirror account", as per RBI guidelines. The further disputed questions of fact raised by the petitioners cannot be gone into while considering the writ petition in extra-ordinary writ jurisdiction.

6. It was/is open for the petitioners to raise the disputed questions of fact for proper adjudication as per the Act, 2002 by taking recourse of statutory remedy of approaching the DRT under Section 17 of 2002 Act.

7. In view of the discussions above, the writ petition is dismissed being devoid of any merit. However, the petitioner is free to seek his remedy in accordance with law.

(Jaswant Singh)
Judge

(M. S. Sahoo)
Judge

January 12th 2022
Cuttack

dutta/Gs