**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.20547 of 2012**

**Dushasan Behera** .... ***Petitioner***

Mr. Rajesh Kumar, Proxy Counsel
on behalf of Mr. U.C. Patnaik, Advocate

*-versus-*

***Branch Manager, State Bank of India, Polasara ADB Branch, Ganjam and Others*** .... ***Opp. Parties***

Mr. Himanshu Patnaik, Advocate for the Bank

**CORAM:**
**JUSTICE JASWANT SINGH**
**JUSTICE M.S. RAMAN**

**ORDER**

**Order No.** **04.05.2022**

**07.** **1.** This matter is taken up through virtual/physical mode.

**2.** The petitioner has preferred this writ petition to challenge the notice dated 12.07.2012 issued under Section 13(4) of the SARFAESI Act, 2002 (for short "the Act, 2002") by the Opposite Parties No.1 & 2/ SBI, whereby symbolic possession of the scheduled property was undertaken, and also to invalidate the equitable mortgage created with respect to his property for securing a loan from SBI for Opposite Party No.3 i.e. M/s. Mahavir Diary and Agro Processors Ltd. (hereinafter "borrower").

**3.** The brief facts as pleaded are that the petitioner i.e. Dushasan Behera, during the year 2009 availed a loan of Rs.10,50,000/- from the

Opposite Party No.4 i.e. Beleswar Panda by mortgaging his property located at Mouza- Khaera, Khata No-46, Chaka No-519, Plot No.1098 and Chaka No-523, Plot No-1110 (hereinafter, "scheduled property") vide an agreement dated 18.08.2009. The petitioner claims that during the execution of the said agreement, the Opposite Party No.4/Beleswar Panda acquired the original ROR of the scheduled property and fraudulently made him execute a General Power of Attorney dated 18.08.2009 (on the same day of execution of agreement) to act on his behalf with respect to the scheduled property. It is his claim that inspite of his best effort he could not locate Opposite Party No.4/Beleswar Panda and thereby defaulted in his payment. He claims to have no clue about any securitization proceedings until the possession of the scheduled property was taken by the Opposite Parties No.1 & 2/ State Bank of India through a possession notice dated 12.07.2012 published in a daily newspaper.

**4.** The petitioner claims that the Opposite Party No.4/Beleswar Panda has fraudulently created equitable mortgage with respect to the scheduled property with the help of the aforementioned original ROR of the scheduled property and the General Power of Attorney dated 18.08.2009 to secure a loan for Opposite Party No.3/ borrower from Opposite Party Nos.1 & 2/ SBI on 09.02.2010. It is the petitioner's case that he never stood as guarantor to secure payment of the aforesaid loan. He finally claims that the Opposite Party No.4/Beleswar Panda was never authorized to act on his behalf and any transactions carried out with respect to the scheduled property should be quashed.

**5.** Upon notice, the O.P. Nos.1 & 2/SBI filed a counter affidavit dated 15.04.2017 in reply to the petition preferred by the petitioner. The said counter affidavit provided that the Opposite Party No.3 i.e. borrower availed a Cash Credit and Term loan facility from the State Bank of India by mortgaging the immovable properties of the petitioner i.e. Dushasan Behera through the Opposite Party No.4/ Beleswar Panda, who was authorized to act on behalf of the petitioner vide a Registered General Power of Attorney dated 18.08.2009 in respect of the scheduled property. Further, the Opposite Party No.3 i.e. borrower defaulted in payment of loan and accordingly the loan account was classified as NPA on 20.06.2011. Subsequently, notices under Section 13(2) and Section 13(4) on 12.07.2012 were issued under the Act, 2002. It is also provided that the Bank i.e. Opposite Party Nos. 1 & 2 have filed an Original Application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which is still pending before the learned Tribunal.

The Opposite Party Nos.1 & 2 vide the same affidavit dated 15.04.2017 also contend that the petitioner i.e. Dushasan Behera and the Opposite Party No.4/Beleswar Panda are hand in glove with each other to evade the lawful realization of the loan dues of the Bank amounting to more than Rs.1 crore and the O.P. No.4 is attempting to alienate the scheduled property.

**6.** The aforementioned Securitization proceeding was stalled by an interim order of this Court dated 27.10.2012. The order is reproduced below:-

> "As an interim measure, the auction under Annexure-4 may be held, but the property in question shall not be handed over to any third party without leave of this Court subject to the petitioner depositing a sum of Rs.2 lakhs before the Registry of this Court by way of pay order within a period of two weeks from today."

**7.** During the pendency of this case, an attempt was made to settle the matter *via* Lok-Adalat. However, on 09.12.2017 such attempt failed and the matter was referred to a regular bench.

**8.** On 11.03.2022, we directed the O.P. Nos.1 & 2/SBI to file fresh affidavit indicating the present status of the loan account. Consequently, the O.P. Nos.1 & 2/SBI filed a fresh affidavit dated 25.04.2022. The said affidavit disclosed that the two loan accounts were classified as NPA on 20.06.2011 and a notice under Section 13(2) & Section 13(4) dated 12.07.2012 of the Act, 2002 was issued. It also revealed that the apprehension raised by the Bank in the earlier affidavit came to be true as the scheduled property has been clandestinely and illegally sold to one Madhusmita Ray by the mortgagor without any permission of the Bank, and inspite of the title deeds of the secured asset being in the custody of the Bank.

**09.** The affidavit dated 25.04.2022 revealed that the outstanding dues as on 31.03.2022 in the Cash Credit Account No.30643163585 is Rs.17,02,208.87, in the Term Loan Account No.31059562723 is Rs.1,99,09,508.42 and Legal expenses & other charges is Rs.1,58,040.00. Thus the total dues for which the borrowers/guarantors are liable to repay comes to Rs.2,17,69,757.29 (as on 31.03.2022).

**10.** After hearing the learned counsels for the parties and going through their pleadings with their able assistance, we find the present writ petition to be devoid of any merits.

The plea in respect of declaration to the fraud committed by Beleswar Panda (O.P. No.4) and by the Bank officials is without any valid basis as only bald averments have been made without any specific instances reflecting commission of any fraud. Still further, the prayer for such a declaration would not be maintainable in writ jurisdiction as it requires adjudication of disputed facts.

The challenge to the demand notice and symbolic possession notice under the SARFAESI Act, 2002 is also not maintainable as based on a registered General Power of Attorney duly executed by the petitioner in favour of the borrower/O.P. No.4 in the office of Sub-Registrar, Cuttack, the property owned by the petitioner was offered as collateral security with equitable mortgage.

The execution of the said GPA (General Power of Attorney) is not disputed by the petitioner nor has it been shown that the terms of the authorization did not go to the extent of permitting Beleswar Panda to offer the property owned by the petitioner as collateral security. Thus, the lawful course adopted by the Bank to recover the outstanding liabilities of the borrower-O.P. No.3 including *qua* the collateral security cannot be faulted in any manner.

**11.** In view of the above, the writ petition is dismissed.



**(Jaswant Singh)**
**Judge**

**(M. S. Raman)**
**Judge**

Basudev

May 4th, 2022
Cuttack