

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.660 of 2011

M/s. Ganesh Hardware Stores ***Petitioner***

Mr. Lucky Mohanty, Advocate

-versus-

Chief General Manager, State Bank of India and another ***Opposite Parties***

Mr. D.P. Sarangi, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
28.07.2022**

Order No.

06. 1. Though the matter was directed to be listed today, it was initially not shown in the list. On being mentioned by the learned counsel for the Petitioner, it is taken up by a separate notice.
2. The challenge the present writ petition is to an order dated 3rd January, 2011 passed by the Debts Recovery Tribunal, Orissa, Cuttack (DRT) rejecting an application filed by the Petitioner under Section 17 (1) of SARFAESI Act, 2002 seeking a direction to the Opposite Parties Bank to produced nine documents. While directing notice to issue in the petition on 21st January, 2011, this Court stayed the further proceeding in Diary No.222 of 2010 pending before the DRT, Cuttack.
3. An earlier order passed by this Court on 31st March, 2021 disposing of this writ petition was set aside by the Supreme Court of India by an order dated 5th May, 2021 in Civil Appeal No.3669

of 2022 and this Court was asked to decide and dispose of the main writ petition within three months.

4. Pursuant to the order passed by this Court in the present writ petition thereafter on 4th July, 2022 a counter affidavit has been filed by the Chief Manager of the State Bank of India, Motiganj Evening Branch, where *inter alia* specific to the documents in question, it is stated in para-6 as under:

“6. That besides the above, it would be pertinent to mention here that this branch is functioning in a tenanted premises right from the date of its opening on 04.06.81 at Motiganj Bazar, Balasore. The branch shifted on 18.01.16 to its present tenanted building at “Sanjay Heights”, located at Gadgadiah Chhak Road, PO/PS/Dist: Balasore-756003. The deponent has been posted as Chief Manager of the branch on and from 17.05.22 and was never posted at the branch at any point of time prior to that date. As such he has no personal knowledge about the existence of the documents sought to be produced. Only after taking up the matter for hearing after remand, he having been asked to trace out the said documents, he engaged bank staff to search and trace out the documents from the record room. But till date the said documents are not traceable and he suspects that after closure of the concerned loan accounts the said documents have either been destroyed or have been mingled with other obsolete documents. As such, if directed to produce the said documents, these opp. parties shall be seriously prejudiced but on the other hand the said documents are not all relevant for a just decision of the application filed by the petitioner U/s.17 of the SARFAESI Act.”

5. In order that there should not be any further delay in the disposal of the proceeding before the DRT, the Court directs that as and

when any or all of the documents as sought by the Petitioner are able to be located by the Opposite Party Bank, copies thereof be produced before the DRT, with copies to the Petitioner as long the proceedings are pending before the DRT. Since the claim of the Bank is that the documents are not traceable as at present, the proceeding before DRT need not wait and can proceed in accordance with law. The impugned order of the DRT stands modified accordingly. This Court clarifies that it has not expressed any view on the respective contentions of the Petitioner and the Bank on merits.

6. With the above observations, the interim order is vacated and the writ petition is disposed of. A copy of this order be sent to the DRT concerned forthwith.

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

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge