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

**W.P.(C) No.24379 of 2014**

***Sanjay Ku Sahu*** .... ***Petitioner***

Mr. T.K. Satapathy, Advocate

*-versus-*

***State of Odisha & others*** .... ***Opp.parties***

Mr. L. Samantaray, AGA

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

**ORDER**
**01.11.2022**

**Order No.**

12. This matter is taken up through hybrid mode.

**1.** The relief as prayed for in the writ petition by the petitioner in the writ petition is against the Baripada Urban Co-operative Bank Ltd (hereinafter the Co-operative Bank for short) which has been impleaded as opposite party nos.6 & 7 through its functionaries. The Authorized Officer of the Baripada Urban Co-operative Bank Limited has been impleaded as opposite party no.5, as he has initiated proceeding for taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

**2**. The petitioner took a cash credit loan of Rs.15,00,000/-lakhs as well as another overdraft facility of Rs.5,00,000/- on 03.1.2003 from the Baripada Urban Co-operative Bank Limited, pledging his agricultural land and building as mortgage and certain fixed deposits as security.

**3**. The Bank issued notice dated 07.11.2012 to the petitioner-borrower as well as the guarantor after the loan had become NPA on 19.08.2013, demanding a principal of Rs.16,93,329/- and interest amounting to Rs.47,35,017/- the total demand being Rs.64,28,346/.

Notices under Section 13(2) of SARFAESI Act were issued by the Bank dated 15.01.2013, received by the petitioner on 18.01.2013. Auction notice for sale of the secured asset was issued under Section 13(12) of the SARFAESI Act, 2002 read with Rule-9 of the SARFAESI Rule,2002 by public notice dated 08.03.2014 published in the daily newspaper, "The Sambad" dated 11.03.2014.

**4**. Challenging the aforesaid action of the opposite party-Bank, the writ petition has been filed with the following prayer :

> **"***The petitioner therefore prays that the Hon'ble Court be pleased to admit this writ application and after hearing the parties declared that the seizure of the mortgage properties of the petitioner is illegal and against mandate of law and further the Hon'ble Court be please to direct the opposite parties to settle the liabilities of the petitioner as per law prescribed under the Orissa Co-operative Societies Act and Rule."*

**5.** By filing Misc. Case No.16274 of 2015 on 21.09.2015, the petitioner further enclosed the auction sale notice dated 04.06.2015 published in the daily

"The Sambad" and the following prayer has been made in the said misc. Case:

> *"The petitioner therefore, humbly prays that this Hon'ble Court be graciously pleased to pass appropriate direction/order in the present fact and circumstances in the case in the interest of justice and equity."*

**6.** A further Misc. Case No.1938 of 2016 dated 04.02.2016 has been filed enclosing copy of the auction sale notice published on 09.01.2016 published in the daily "The Sambad" with the following prayer:

> "*The petitioner therefore, humbly prays that this Hon'ble Court be graciously pleased to pass appropriate direction/order in the present fact and circumstances in the case in the interest of justice and equity."*

**7.** A further Misc. Case No.3472 of 2018 filed on 13.03.2018 enclosing copy of the auction sale notice dated 08.02.2018 published in the daily "The Sambad" dated 13.02.2018 with the following prayer:

> "*The petitioner therefore, humbly prays that this Hon'ble Court be graciously pleased to pass appropriate direction/order in the present fact and circumstances in the case in the interest of justice and equity."*

**8**. The principal contention raised by the learned counsel for the petitioner is that after the licence of the Bank was cancelled on 16.10.2014 by the Reserve

Bank of India (RBI), opposite party no.3 and the Registrar, Co-operative Societies, Orisha-opposite party no.2 was requested by the RBI to issue an order for winding up of the Bank and appoint liquidator, the notices issued under Section 13(2) of the SARFAESI Act, 2002 and the Rules made thereunder, are unsustainable in law.

**9**. The aforesaid contention is conspicuously silent in the prayer of the petitioner in the writ petition and the miscellaneous cases. This Court is of the view that such contention is misconceived as the demand notice under Section 13(2) of the SARFAESI Act was issued on 15.01.2013 received by the petitioner on 18.01.2013, i.e., much before the licence was canceled by the RBI (opposite party no.3) on 16.10.2014 and the sale notices issued in the vernacular newspaper in Odia as annexed to the subsequent misc. cases for sale of the secured assets, have been issued by the Authorized Officer of the Baripada Urban-operative Bank Limited, Baripada. Therefore in our considered opinion, the process of liquidation of the secured assets was set into motion on 15.01.2013. After appointment of the liquidator for the Bank by the Registrar, Co-operative Societies, the further sale notices were re-issued by the Authorized Officer/liquidator.

**10**. It is submitted by the learned Additional Government Advocate appearing for the opposite party nos.1 and 2 that since the process under Section 13 (2) of the SARFAESI Act was initiated on 15.01.2013 and the auction sale notice under Section 13(12) of the SARFAESI Act, 2002 read Rule-9 of the SARFAESI Rule,2002 was initiated on 08.03.2014, the subsequent continuation of the said process by the liquidator/Authorised Officer cannot be faulted with as the licence of the Bank was cancelled by the RBI, by order dated 16.10.2014 and the statutory authority, i.e., the Registrar, Co-operative Societies, appointed the liquidator for the Bank.

**11**. Having heard the learned counsel for the parties and considering the pleadings/documents available on records, we are of the considered view that the demand notice under Section 13(2) of the SARFAESI Act of 15.01.2013 and the auction sale notice dated 08.032.2014 being prior to the cancellation of the licence of the Bank by the RBI on 16.10.2014, are consistent with law and the subsequent continuation of the said process, cannot be faulted with.

**12**. At this stage, learned counsel for the petitioner submits that he may be permitted to pursue his remedy available under the Co-operative Societies Act by moving the appropriate authority.

**13**. Considering the submissions of the learned counsel of the petitioner while dismissing the writ petition being devoid of any merit, it is further observed that the petitioner shall have the liberty to take recourse to any remedy available under law for redressal of his grievances.

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

**(M.S. Sahoo)**
**Judge**

November 1st 2022
Cuttack

Dutta/Gs