IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.245 of 2012

Keshab Chandra Das .... ***Petitioner***

None

-versus-

Authorised Officer, State Bank of Bikaner and Jaipur, At-Bajrakabati Road, District-Cuttack & Others .... ***Opposite Parties***

Mr. Purna Chandra Rath, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
24.11.2022
(Hybrid Mode)

Order No.

17. **1.** Petitioner is stated to have raised a Housing Loan for a sum of Rs.14 lakhs on 03.06.2003 from State Bank of Bikaner and Jaipur, Cuttack Branch (now merged with State Bank of India). To secure the loan, the residential house, At-Chauliaganj, Cuttack was mortgaged as a collateral security. The said house was also offered as a collateral security in an overdraft facility availed for an amount of Rs.6 lakhs by M/s. Puspa Automobiles, a Proprietorship concern of the son of the petitioner on 16.03.2009. The Housing Loan of the petitioner due to non-payment of installments was classified as NPA on 29.09.2010 leading to issuance of a demand notice dated 04.10.2010 under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") recalling the outstanding liability for a sum of Rs.20,58,680/- due on that date. Subsequently, symbolic possession of the mortgaged property was also assumed vide notice dated 31.12.2011 issued under Section 13(4) of the Act, 2002.

2. The prayer made in the present Writ Petition is for setting aside the aforesaid notice under Section 13(4) of the Act, 2002 as also a direction to deduct the penal interest and also settle the account under an OTS Scheme.

3. This Court while issuing notice on 05.01.2012 granted the following interim protection to the petitioner:

> *"Misc. Case No.137 of 2012*
>
> *Issue notice as above accepting one set of process fee.*
>
> *As an interim measure, this Court directs that no coercive action shall be taken against the petitioner till 21.02.2012 pursuant to Annexure-4 subject the petitioner depositing a sum of Rs.2,00,000.00 (Rupees Two Lakhs) with the opposite party-bank within a period of one month from today."*

4. At the time of hearing, learned counsel for the Bank states that no amounts in compliance of the aforesaid directions were deposited. He further states that the Bank however is pursuing the recovery process before the DRT under the Recovery of Debts and

Bankruptcy Act, 1993 instead of SARFAESI Act, 2002. He further submits that it is well settled that no direction can be issued by a Court for accepting the OTS proposal much less in the absence of any prevailing non-discriminatory and non-discretionary OTS Policy. He further submits that the charging of the penal interest is in terms of the conditions of the contractual obligations executed between the parties.

5. None has put in appearance on behalf of the petitioner.

6. In view of the above, we find that the maintaining of the present writ petition for a simplicitor challenge to the notice assuming symbolic possession without any valid ground raised would not be maintainable. We are also persuaded to accept the plea of the learned counsel for the Bank regarding the OTS as also charging of the penal interest. Above all, the non-compliance of the interim directions by depositing the required amounts itself disentitles the petitioner to invoke the equitable jurisdiction of this Court.

The Writ Petition is accordingly dismissed.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

AKK

24th November, 2022
Cuttack