IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14477 of 2013

M/s. Maa Tarini Saree Sales .... ***Petitioner***

None

-versus-

The Assistant General Manager, State Bank of India, Bhubaneswar & Another .... ***Opp. Parties***

None

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN

ORDER (Oral)

Order No. **12.10.2022**

05. This matter is taken up through virtual/physical mode.

1. Petitioner is a Proprietorship concern of Sri Krushna Chandra Nayak having its business of Saree Sales Shop at Plot No.1762, Mahatab Road, Old Town, Bhubaneswar. The petitioner to augment his business availed a Cash Credit facility for a limit of Rs.7 lakhs on 4th/11th February, 2010 from State Bank of India, Bhubaneswar. Due to lack of servicing the loan account, it was declared as NPA leading to issuance of a demand notice dated 21.08.2012 (Annexure-2) under Section 13(2) of the SARFAESI Act, 2002 recalling the outstanding liability of Rs.10,04,499/- due as on 20.08.2012. The petitioner is stated to have made an application on 06.11.2012 (Annexure-3) praying for an amicable settlement of the loan account under the OTS Scheme. Thereafter symbolic possession of the mortgaged immovable property was assumed on 14.06.2013.

2. By filing the present writ petition challenge has been laid to the aforesaid notice dated 14.06.2013 with the further prayer for a direction to the Bank to settle the loan account under the OTS Scheme as per guideline issued by the Reserve Bank of India.

3. This Court while issuing notice granted interim protection vide order dated 08.07.2013, which reads as under:

> *"Issue notice to the opposite parties on the question of admission by registered post with AD, requisites for which shall be filed within a week.*
>
> *Put up this matter three weeks after.*
>
> *As an interim measure, this Court directs that no coercive action shall be taken against the petitioner till 10.08.2013 subject to the petitioner depositing a sum of Rs.1,20,000/- (one lakh twenty thousand) with the bank in two equal installment. The first installment shall be deposited by 31.7.2013 and the second by 21.8.2013.*
>
> *This Court further directs that if an appropriate application is filed, the proceeding pending before the D.R.T., Cuttack shall be adjourned for a period of six weeks.*
>
> *Issue urgent certified copy."*

4. Perusal of the record reveals that although the officials of the Bank had been appearing on different occasions before the Lok Adalat, where the case was referred to, however there was no representation on behalf of the petitioner. At the time of hearing today, the position is the same.

5. We find that there is no basis laid down to lay challenge to the possession notice and also in view of the settled law in ***Bijnor Urban Cooperative Bank Limited, Bijnor and Others Vrs. Meenal Agarwal and Others, AIR 2022 SC 56*** that no direction can be issued to the Bank for settling the loan account under an OTS Scheme, the other prayer, moreso without referring to the existence of any non-discriminatory and non-discretionary OTS Scheme cannot be entertained. Thus, we find that the petitioner has no right to seek the mandamus in this writ petition.

6. In view of the above, the writ petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

12th October, 2022
Cuttack