IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8897 of 2015

Sailabala Khuntia .... ***Petitioner***

Mr. Ashutosh Panda, Proxy Counsel, on behalf of Mr. Swarup Kumar Patnaik, Advocate

-versus-

Authorised Officer, The Urban Cooperative Bank Ltd., Cuttack & Others .... ***Opp. Parties***

Mr. Sidharth Das, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
01.11.2022

Order No.

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

1. Petitioner is the L.R./widow of Bishnu Charan Khuntia who had availed a House Repairing Loan for a sum of Rs.50,000/- on 06.02.1995 from the Urban Cooperative Bank Limited, Cuttack. Due to non-payment of the installments, the loan account was declared NPA on 31.03.1998. The deceased husband was granted the benefit of an OTS Policy vide sanction letter dated 28.01.2004 (Annexure-1), whereby the loanee was required to deposit a total sum of Rs.41,002/- on or before 28.02.2004 or in the alternative would approach the Bank with the request for payment in twelve monthly installments along with interest after depositing at least 25% of the settlement amount on or before 28.02.2004. In response, the loanee concededly deposited 25% of the settlement amount within time. However it is not denied that the entire remaining balance of Rs.30,751/- along with interest could not be deposited in time by 28.02.2005, as it is claimed only a sum of Rs.20,300/- was paid by the dateline time. It is further claimed that another sum of Rs.7,453/- was deposited by 19.03.2007. Since the terms of the settlement were not adhered to, the Bank proceeded to cancel the sanctioned OTS and invoked the recovery process under the SARFAESI Act.

2. The petitioner by filing the present writ petition has laid challenge to the notice dated 19/20.03.2015 (Annexure-5 series) issued under Section 13(4) of the SARFAESI Act, 2002, whereby symbolic possession of the immovable property/residential house offered as a collateral security was assumed. It is asserted that the Bank in spite of knowing about the death of the borrower-husband on 09.12.2011 had still proceeded to issue the impugned notice against a dead person apart from having failed to issue a notice under Section13(2) of the SARFAESI Act at all. It is thus claimed that the entire recovery process is liable to be set aside, while making a further prayer for permission to deposit the remaining balance as per the sanctioned OTS (Annexure-1) along with interest.

3. Learned counsel appearing for the Bank based on the affidavit dated 27.10.2022 filed by Shri Pratap Chandra Swain, Authorised Officer on behalf of the Bank concedes that the death of the husband-borrower came to the knowledge of the Bank in the light of the representation dated 17.01.2013 filed by the petitioner. It is also conceded that the notice dated 11.03.2015 (Annexure-5 series) for symbolic possession has actually been issued in the name of the late husband-borrower while asserting that a demand notice under Section 13(2) of the SARFAESI Act was issued on 31.10.2014, that too against the name of the dead borrower. He thus is unable to deny that the mandatory provisions of the Section 13 of the SARFAESI Act, 2002 read with the Rule 3(2) to (4) of the SARFAESI Rules, 2002 have not been followed thereby rendering the entire recovery process as vitiated. Faced with such a situation, he concedes that the writ petition be allowed with permission to the Bank to proceed afresh in initiating the recovery process against the L.Rs. of the borrower in accordance with law.

In response, learned counsel for the petitioner cannot possibly contest the initiation of a fresh recovery process by the Bank in accordance with law in the backdrop of the Scheme of the SARFAESI Act, 2002.

4. In view of the aforesaid, the present writ petition is allowed. The impugned notices are hereby set aside. However, the Bank is granted liberty to proceed afresh the recovery process under the SARFAESI Act in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

AKK

1st November, 2022
Cuttack