

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3937 of 2022

Chhaya Yadav

....

Petitioner

Mr. Lucky Mohanty, Advocate

-versus-

***Managing Director, Assets
Reconstruction Company(1)
Ltd. and Others***

....

Opp. Parties

Mr. B.K. Biswal, Advocate for O.P. Nos.1,2 & 3
Mr. Biplaba P.B. Bahali, Advocate for O.P. No.4

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

**ORDER (Oral)
21.04.2022**

Order No.

- 03.** **1.** This matter is taken up through virtual/physical mode.
- 2.** The petitioner along with her husband Deepak Kumar Behera were the co-borrowers for a loan of Rs.3,59,00,000/- availed for their partnership firm “the Winner” from DCB Bank, Bhubaneswar Branch, in the month of May, 2016. The partnership firm having defaulted in servicing the account, the same was classified as NPA on 31st October, 2018. The loan account was assigned to the Assets Reconstruction Company Ltd./Opposite Party No.1 on 20th January, 2020 by the DCB Bank. The recovery process was initiated by Opposite Party No.1 under the SARFAESI Act, 2002 leading to the auction sale of the Secured Asset i.e. residential property owned by the petitioner/guarantor-cum-co-borrower on 31st January, 2022 for sale price of

Rs.2,38,50,000/- towards the outstanding liabilities of around Rs.6 crores.

3. The petitioner in order to save her residential house, filed the instant writ petition. Upon willingness of the petitioner/guarantor to exercise her Right of Redemption by depositing the entire sale price along with reasonable compensation for the auction purchaser, this Court vide order dated 10th February, 2022 permitted the petitioner to deposit a sum of Rs.2,40,00,000/- on or before 18th February, 2022 with a direction for keeping the execution of the sale certificate in abeyance, which reads as under:-

“1. This matter is taken up through hybrid mode.

2. The petitioner is the guarantor and has offered the entire sale price for which the auction has been confirmed in favour of opposite party no.4, as also the other expenses plus compensation for the said auction purchaser/opposite party no.4. This offer is towards invoking his right of redemption.

3. Issue notice for 21st March, 2022. Mr. B.K. Biswal, learned counsel appears and waives of notice on behalf of opposite party nos.1 to 3.

4. Requisites for issuance of notice to opposite party no.4 through Registered/Speed Post with A.D. be filed within seven working days.

5. As an interim measure, subject to the petitioner depositing a sum of Rs.2,40,00,000/- on or before 18th February, 2022, the issuance of sale certificate to opposite party no.4 shall be kept in abeyance till next date date.

6. List on 21st March, 2022.”

4. At the time of resumed hearing today, learned counsel for the auction purchasers (O.P. No.4) and O.P. Nos.1,2 & 3 submit that the petitioner did not comply with the

conditional order dated 10th February, 2020 by depositing the said amount towards right of redemption. Instead, a third party-Mr. Prana Krushna Nayak has stepped in (at the instance of petitioner) and submitted the demand draft for the said amount.

5. Mr. Arun Patra, learned counsel representing the third party, which is not impleaded in the present writ petition states that his client has tendered that amount on asking of the petitioner for purchase of that said property.

6. At this stage, learned counsel for the auction purchaser submits that such a recourse is impermissible in law, as the said third party had full opportunity to participate in the open auction conducted on 31st March, 2022, having failed to do so cannot be granted opportunity to purchase the property over and above the right of the auction purchaser who has deposited the entire sale price.

7. Faced with the aforesaid situation, learned counsel for the petitioner prays for an unconditional withdrawal of the writ petition to enable his client to pursue his remedy before the DRT by filing an application under Section 17 of the SARFAESI Act, 2002 to challenge the auction proceedings in accordance with law.

8. Learned counsel for the Bank and the auction purchaser have no objection to such withdrawal. However, Mr. Patra has made a mercy plea for directing the Bank to remit the amount tendered by way of Demand Draft dated 15th February, 2022 in purported compliance of the interim order dated 10th February,

2022 passed by this Court, in view of the settled law that the amounts deposited pursuant and in compliance of the interim order passed by this Court for a specific purpose are liable to be refunded upon failure of that purpose having been achieved.

9. Learned counsel for Opposite Party Nos.1,2 & 3 upon instructions from Mr. Nilanjan Dedebbhuti, Senior Chief Manager, Authorised Officer, Asset Reconstruction Company (India) Limited undertakes to refund the amount submitted by the said third party- Prana Krushna Nayak by way of RTGS upon application to be made by Mr. Nayak.

10. In view of the aforesaid developments, the present writ petition is dismissed as withdrawn with liberty to the petitioner to seek her remedy in accordance with law.

The Opposite Party Nos.1,2 & 3 shall be bound by their statements *qua* refund of the amount to Mr. Prana Krushna Nayak.

**(Jaswant Singh)
Judge**

**(M. S. Raman)
Judge**

Basudev

April 21st, 2022
Cuttack