IN THE HIGH COURT OF ORISSA AT CUTTACK

<u>W.P.(C) No.4051 of 2022</u>

M/s. Omm Sivay Traders .... ***Petitioner***

Mr.Sabita Ranjan Pattnaik, Advocate

-versus-

Authorized Officer & Chief Manager, Bank of Baroda, Mani Sahu Chhaka Branch, Cuttack and another .... ***Opp. Parties***

Mr. S. Ghose, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

<u>ORDER (Oral)</u>

<u>Order No.</u> **26.04.2022**

02. **1.** This matter is taken up through virtual/physical mode.

2. The petitioner is a proprietorship firm of Braja Kishore Mohanty, which had availed the Cash Credit facility for a sum of Rs.15 lakhs in the year 2018 from Bank of Baroda/Opposite Parties, to secure the loan, the father of the petitioner stepped in as a guarantor and created an equitable mortgage of immovable property.

3. Due to financial indiscipline the loan account was declared NPA on 31.12.2019 leading to the issuance of a demand notice dated 22.01.2020 under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") recalling an outstanding liability of Rs.15,25,407.70 due as on January, 2020. Subsequently, symbolic possession was assumed on 27.09.2021 by issuing notice under

Section 13(4) of the Act, 2002 and the E-auction sale notice dated 25.01.2022 was issued for fixing the auction sale on 17.02.2022.

3. By filing the present writ petition the challenge has been laid to the aforesaid E-auction sale notice dated 25.01.2022.

4. Upon willingness of the petitioner to save the sole residential house/mortgaged property of the family by deposit of the outstanding amount of around Rs.16 lakhs within a reasonable time, this Court issued notice and also passed a conditional interim order directing the petitioner to deposit a sum of Rs.8 lakhs.

5. The order dated 10.02.2022 reads as under:

> "**1.** This matter is taken up through Hybrid Mode.
>
> **2.** Counsel for the Petitioner submits that the Petitioner's sole residential house is being put to auction sale on 17th February, 2022 for an outstanding liability of around Rs.16,00,000/- (Rupees Sixteen Lakhs). He further submits that his client is ready and willing to deposit a substantial amount upfront and the remaining balance amount along with interest within next three months.
>
> **3.** Issue notice to the Opposite Parties for 31st March, 2022.
>
> **4.** Mr. S.K. Ghosh, learned counsel appears and waives off notice on behalf of both the Opposite Parties/bank.
>
> Let requisite copies of the Writ Petition be served upon him by tomorrow (11.02.2022).

> **5.** In the event of the Petitioner depositing a sum of Rs.8,00,000/- (Rupees Eight lakhs) before 17th February, 2022 and an undertaking to deposit the remaining balance amount along with interest within next three months, the successful bid, if any, shall not be confirmed without the leave of the Court.
>
> **6.** Issue urgent certified copy of the order on proper application."

6. At the time of hearing, learned counsel for the Bank states that the petitioner did not deposit the required sum of Rs.8 lakhs in compliance of the order dated 10th February, 2022. He further submits that even the auction fixed for 17.02.2022 had failed for lack of any intending bidder. He further submits that the petitioner has already filed S.A. No.133 of 2021 challenging the recovery process initiated by the Bank under the SARFAESI Act, 2002 before the DRT, Cuttack.

7. Faced with the aforesaid situation, learned counsel for the petitioner prays for an unconditional withdrawal of the present writ petition to enable the petitioner to pursue his remedy in the pending S.A. before the DRT.

8. In view of the above, the writ petition is dismissed as withdrawn with aforesaid liberty.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

Basudev

April 26th, 2022
Cuttack