IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.4177 of 2022

Debasmita Samantray …. ***Petitioner***

Mr. Ranjan Kumar Rout, Advocate

-versus-

Chief Manager-cum-Authorized Officer, Indian Bank, Bapuji Nagar Branch, Bhubaneswar and Others …. ***Opp. Parties***

Mr. Anshuram Mishra, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
08.12.2022

(Hybrid Mode)

Order No.

05. **1.** The petitioner is a defaulting borrower against whom recovery process under the SARFAESI Act, 2002 (for short, "the Act, 2002") was initiated after the Housing Loan of Rs.40,75,000/- was classified as NPA on 16th August, 2019. Thereafter, the recovery proceedings have culminated into a successful auction of the mortgaged residential property on 12th August, 2021. The actual physical possession of the said mortgaged property is also stated to be taken on 15th January, 2022 by the Bank in compliance of the order dated 8th October, 2021 passed by the District Magistrate and Collector, Khurda on an application under Section 14 of the Act, 2002.

2. The present Writ Petition has been filed with the prayer for quashing the order dated 8th October, 2021 (Annexure-8) passed by the District Magistrate and Collector, Khurda whereby the order was given for providing official assistance to undertake actual physical possession.

3. At the time of hearing, learned counsel for the Bank submits firstly that a Writ Petition to challenge the order passed by the District Magistrate is not maintainable and the proper remedy is to approach the DRT under Section 17 of the Act, 2002.

Secondly, the impugned order dated 8th October, 2021 (Annexure-8) passed by the District Magistrate and Collector, Khurda stands implemented as the actual physical possession has already been delivered to the Bank with official assistance on 15th January, 2022.

Thirdly, the petitioner having already filed an S.A. No.94 of 2021 challenging the recovery process including the auction proceedings, parallel proceedings before this Court would not be maintainable.

In response, learned counsel for the petitioner is unable to refute the aforesaid factual contention raised by the learned counsel for the Bank.

4. In view of the above, we find that the present Writ Petition is liable to be dismissed.

Accordingly, the same is dismissed relegating the petitioner to seek her available remedies in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Sipun

8th December, 2022
Cuttack