IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.4470 of 2022

Nityananda Biswal .... ***Petitioner***
Mr. Ashok Kumar Panigrahi, Advocate
-versus-

State of Odisha & Others .... ***Opposite Parties***
Mr. B.N. Udgata, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No. **25.07.2022**

08. **1.** This matter is taken up by virtual/physical mode.

2. The Petitioner, defaulting borrower of House building loan to the tune of Rs.20.00 lakhs in the year 2011, craves for issue of writ of *mandamus* by staying the proceeding initiated under the SARFAESI Act, 2002 coupled with a direction to stay the operation of order dated 13th January, 2022 passed in Bank Misc. Case No. 12 of 2022 under Section 14 of said Act, 2002 by the Collector, Jagatsinghpur to provide Police/Magisterial assistance at the time of taking over possession of the secured assets of the borrower by Canara Bank, RO-II, Bhubaneswar. Due to irregularity in repayment of E.M.Is, the loan account being classified as NPA on 2nd June, 2015, the Bank approached the Debts Recovery Tribunal by way of O.A. bearing No. 304 of 2019 on 18th January, 2019 claiming an amount of Rs.26,72,249.36.

3. While the said proceeding was pending, the Opposite Party-Bank issued notice dated 26th April, 2021 invoking Section 13(2) of the SARFAESI Act, 2002, recalling an amount of Rs.34,46,971.09 as on the said date. Since there was no response, symbolic possession was assumed on 12th August, 2021 in terms of Section 13(4) and subsequently for assuming physical possession, the Collector, Jagatsinghpur was moved in Bank Misc. Case No. 12 of 2022 which was allowed in favour of the Bank on 13th January, 2022 with a direction to Superintendent of Police, Jagatsinghpur and Sub-collector, Jagatsinghpur to provide necessary Police/Magisterial assistance at the time of taking over possession of the secured asset of the Petitioner.

4. Thereafter, notice for auction of the secured asset was issued on 21st February, 2022 fixing date of sale on 26th March, 2022.

5. Mr. B. N. Udgata, counsel for the Bank submitted that physical possession of the secured asset was taken on 11th March, 2022 and the outstanding amount as on 21st February, 2022 stood at Rs.38,56,357.19.

6. This Court *vide* order dated 15th March, 2022 adjourned the matter on the request of the counsel for the Petitioner so as to enable him to seek instruction as to whether 50% of the liability could be deposited by the Petitioner with the remaining balance to be paid within two months. Accordingly, on 17th March, 2022 this Court passed the following order:

> "***
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> *5. As an interim measure subject to the Petitioner depositing a sum of Rs.20,00,000/- (Rupees twenty lakhs) on or before 25th March, 2022, the successful bid, if any shall not be confirmed without the leave of the Court. On the next date the Petitioner shall also file an undertaking to clear the remaining balance by 31st May, 2022 in two equated installments."*

7. After the matter got adjourned for sometime, on 22nd June, 2022, this Court allowed the prayer of the Petitioner seeking time to obtain instruction in respect of extending period to deposit remaining balance on the said date. This Court also directed the counsel for the Bank to seek instruction with regard to refund of amounts deposited pursuant to the order passed by this Court.

8. On 7th July, 2022, this Court recorded the following on the submission made by the counsel for the respective Parties:

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> ***2.*** *Learned counsel for the Petitioner submits that the Petitioner is not able to pay the remaining balance and will file his own affidavit seeking refund of the amounts deposited pursuant to the order passed by this Court.*
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> ***3.*** *Learned counsel for the Bank prays for more time to seek written instructions as regards to the refund of amounts deposited pursuant to the orders passed by this Court."*

9. At the time of hearing today, Mr. B.N. Udgata, counsel for the Bank filed an affidavit sworn to by Mr. P.K. Sasmal, Divisional Manager-cum-Authorized Officer, Canara Bank, RO-II, Bhubaneswar in the district of Khurda, wherein it has been stated as follows:

> *"25.03.2022- The Petitioner deposited Rs.20.00 lakhs with the Opposite Party Bank.*
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> *26.03.2022- E-auction was conducted and one Mrs. Kamini Das was declared as highest bidder who offered highest bid amount of Rs.25,07,000/-. But the Opp. Party-Bank has not yet confirmed the sale by abiding by the direction of this Hon'ble Court.*

10.05.2022- The Petitioner has filed SARFAESI application under dy no 425/2022 before the DRT Cuttack to quash the possession notice as well as the sale notice which is pending for disposal.

11.05.2022- The Petitioner prayed for two months time more beyond May, 2022 for clearing the entire loan outstanding liability and this Hon'ble Court was pleased to direct the Petitioner to deposit another sum of Rs.10.00 lakhs with the bank before the next date and adjourned the case to 22.06.2022. However, the Petitioner did not comply the order dtd.11.05.2022 and has not deposited either Rs.10.00 lakhs as directed by this Hon'ble Court or remaining balance of the loan outstanding.

The Opp. Party-Bank has adjusted the amount deposited by the Petitioner in the loan account and the remaining balance due against the Petitioner is Rs.21,34,804.98 as on 22nd July, 2022 plus further interest and cost."

10. Counsel for the Petitioner submitted that his client is not in a position to deposit rest of the amounts besides Rs.20.00 lakhs being paid upon direction of this Court *vide* order dated 17th March, 2022.

11. Mr. B.N. Udgata, counsel for the Bank emphasized that by virtue of orders of this Court, the auction sale could not be confirmed and the Opp. Party-Bank is ready to refund the amount of Rs.20.00 lakhs as stands deposited by the Petitioner and in the event, the said amount Rs.20.00 lakhs is directed to be refunded the amount of outstanding as stated in the affidavit would get enhanced by the said amount.

12. Be that as it may, considering the submission of the respective Parties, this Court directs the Opp. Party-Bank to refund the amount of Rs.20.00 lakhs stated to have been deposited pursuant to direction of this Court within a period of four weeks from today and it is open for the Opposite Party-Bank to finalize the sale in favour of the successful bidder in favour of Ms. Kamini Das, declared to be the highest bidder. It is clarified that having failed to comply with the terms of the affidavit dated 17th March, 2022 filed by the Petitioner, aforesaid amount of Rs.20.00 lakhs does not carry any interest.

13. With the aforesaid observation and direction, the writ petition is dismissed.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant July 25, 2022 Cuttack