

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P. (C) No. 5634 of 2022

Smt. Manju Jajodia

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

M/s Bajaj Finance Ltd. & Others

....

Opposite Parties

Mr. Ramachandra Panigrahy,
Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
18.04.2022

Order No.

- 03.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** The Petitioner is the wife of the defaulting borrower who had raised a loan of Rs.2,81,25,000/- from Non-banking Finance Company- Opposite Party No.1 on 22nd March, 2016. To secure the loan, the husband-borrower had offered the subject property as collateral security. Due to default in installments, the secured creditor has initiated recovery proceeding under the SARFAESI Act, 2002.
 - 3.** The grievance of the Petitioner is that the property offered as collateral security was fraudulently obtained by the husband by a registered sale deed in the year 2006, which sale deed was

subsequently set aside by the court of Civil Judge (Senior Division), Cuttack vide the judgment and decree dated 18th July, 2018. It is thus canvassed that the Petitioner-wife neither being a borrower nor a guarantor, and being the lawful owner of the property cannot be subjected to recovery process under the SARFAESI Act, 2002.

4. Counsel for the Bank points out that at the relevant time of execution of the equitable mortgage with the Bank, the husband was the lawful owner and the subsequent decree was a collusive decree, wherein the Bank was not a party. Be that as it may, he submits that the proper forum for the Petitioner would be the DRT in proceeding under Section 17 of the SARFAESI Act, 2002, which concededly the Petitioner has already invoked.

5. In response, counsel for the Petitioner submits that the present petition was filed in view of the fact that the Presiding Officer of the DRT was not available and thus, the S.A already filed by the Petitioner still stands pending. He concedes that as of now the DRT, Cuttack has become fully functional upon availability of the Presiding Officer. He thus prays for permission to withdraw the present writ petition to enable the Petitioner to pursue her remedy before the DRT in the pending S.A.

6. In view of the above, the writ petition is dismissed as withdrawn.

7. It is hoped that the DRT, Cuttack, keeping in view the nature of the litigation, would make an endeavour to dispose of the pending litigation at the earliest.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

April 18, 2022
Cuttack

