IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5705 of 2022

Runia Mohapatra .... ***Petitioner***

Mr. B.S. Tripathy-1, Advocate

-versus-

Authorized Officer and Chief Manger, Union Bank of India, Regional office-Sambalpur and Others .... ***Opp. Parties***

Mr. B.C. Panda, Advocate for O.P.Nos.1 & 2-Bank

Mr. T. Mishra, Advocate for O.P.No.3(Auction Purchaser)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE G. SATAPATHY

ORDER (Oral)
16.12.2022
(Hybrid Mode)

Order No.

12. **1.** The petitioner is a defaulting borrower in a cash credit facility with a limit for a sum of Rs.30,00,000/- (Rupees Thirty Lakhs) availed from Andhra Bank, Rourkela (subsequently merged with Union Bank of India) on 29.09.2015. Due to financial indiscipline, the loan account was classified as NPA on 29.05.2019 leading to the issuance of demand notice dated 01.06.2019 under Section 13(2) of the SARFAESI Act, 2002 (hereinafter referred to as Act, 2002) recalling the outstanding liability of Rs.31,42,187/- (Rupees Thirty One Lakhs Fourty Two Thousand and One Hundred Eighty Seven) due as on 01.06.2019 together with future interest and incidental expenses. The symbolic possession of the mortgage property/collateral security was assumed on 05.02.2020 by issuance of a notice under Section 13(4) of the Act, 2002. The mortgage property was sold in favour of KAI International Pvt. Ltd./O.P.No.3 in the e-auction conducted on 16.12.2021 for a sum of Rs.15,40,000/-(Rupees Fifty Lakhs and Fourty Thousand). Hence, the present writ petition has been filed with a prayer to set-aside the sale of mortgaged property on 16.12.2021 as also the issuance of the sale certificate dated 30.12.2021 (Annexure-10) in favour of O.P.No.3.

2. Upon the willingness of the petitioner to clear the entire outstanding liability and also compensate the Auction Purchaser in order to enforce his right of redemption, this Court issued notice to the Opposite Parties, while permitting the petitioner to deposit the required amounts. It is a matter of record that the petitioner at different points of time in compliance of the interim orders passed by this Court, has deposited a total sum of Rs.50,00,000/-(Rupees Fifty Lakhs), which has been kept in a “No Lien” Account.

3. It is admitted by the counsel for the Auction Purchaser that he has received the entire sale consideration (together with interest) deposited by him towards the purchase of the collateral security. Consequently, it is also agreed by the counsel for the Bank and the Auction Purchaser that the issued sale certificate dated 30.12.2021 requires to be recalled or quashed. Learned counsel for O.P. No.3 undertakes to ensure the return of the same to the Bank at the earliest.

It is also conceded that a total sum of Rs.50,00,000/- (Rupees Fifty Lakhs) stands deposited by the petitioner towards liquidating present loan account, which had an outstanding liability of around Rs.32,00,000/- (Rupees Thirty Two Lakhs) before the auction sale of the collateral security. It is also conceded that after deduction of the amount paid to the Auction Purchaser and meeting the outstanding liability in the present account, the present loan account is liable to be closed and certain amounts to be refunded. The actual amounts to be refunded, however, is being disputed by the parties.

Be that as it may, regarding the question of entitlement of refund or withholding it as a General Lien for other liabilities in other loan accounts, we leave the question open for the parties to get decided in appropriate proceedings. But it cannot be disputed that the present loan account would stand closed by appropriating the amounts deposited (kept in a No Lien Account) and, thereby, entitling the petitioner for return of the title deeds unless specifically mortgaged in any other loan account.

4. Accordingly, we permit the Bank to appropriate the amounts deposited in the "No Lien" Account and upon clearing of the outstanding liabilities, close the loan account. The sale certificate dated 30.12.2021 issued in favour of O.P. No.3 is hereby quashed. We further permit the parties to pursue their available remedies in accordance with law in respect of the entitlement of refund of any amount(s) deposited towards the aforesaid loan account. Bank is further directed to return the title deeds, if any, in terms of the Bank Policy within a period of four weeks from today.

The writ petition is disposed of in the above terms.

(Jaswant Singh)
Judge

(G. Satapathy)
Judge

Subhasmita/
Kishore

16th December, 2022
Cuttack