IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7056 of 2022

Arun Kumar Pati …. ***Petitioner***

Mr. Rama Chandra Rath, Advocate

-versus-

Karnataka Bank Ltd., Angul Branch, Angul and Others …. ***Opp. Parties***

Mr. M. Acharya, Advocate on behalf of
Mr. Manoj Kumar Mishra, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
27.07.2022

Order No.

04. **1.** This matter is taken up through hybrid arrangement (virtual/physical mode).

2. The petitioner is a defaulting borrower of a Cash Credit facility sanctioned to the tune of Rs.36 Lakhs on 30.07.2020 by Karnataka Bank, Angul Branch, Angul. Due to non-servicing of the account, the loan account was declared NPA on 01.04.2021. A Demand Notice under Section 13(2) of the SARFAESI Act, 2002 (for short, "the Act, 2002") was issued on 03.07.2021 recalling the outstanding liability of Rs.37,87,468/- plus interest due as on 01.07.2021. The petitioner had filed W.P.(C) No.26598 of 2021 challenging the said Demand Notice, which was disposed of by this Court vide order dated 09.09.2021 with liberty to the petitioner to submit an OTS proposal along with deposit of 25 per cent of the outstanding dues which was to be sympathetically considered by the Bank in view of the hardships undergone by the petitioner due to Covid-19 Pandemic. The consequent fresh proposal dated 23.11.2021 along with the deposit of Rs.9,47,000/- was rejected vide memo dated 30.11.2021 (Annexure-4) on the ground that no settlement amount was mentioned towards the settlement of the outstanding liabilities. In response, the petitioner is stated to have made a fresh proposal vide memo dated 27.12.2021 (Annexure-5) offering a sum of Rs.4,50,000/- apart from the upfront money deposit of Rs.9,47,000/- towards liquidating the loan account which had an outstanding liability of around Rs.30,00,000/- at that time. Subsequently symbolic possession of the mortgaged immovable property offered as a collateral security has been assumed vide notice dated 08.02.2022 issued under Section 13(4) of the Act, 2002.

3. By filing the present Writ Petition, challenge has been laid to the aforesaid notice dated 08.02.2022 (Annexure-6) with a further prayer for issuing a mandamus to settle the account amicably by way of One Time Settlement.

4. After hearing the learned counsel for the petitioner and Bank, we find no merit in the present Writ Petition. Learned counsel for the petitioner is unable to point out any legal infirmity in assuming symbolic possession vide notice dated 08.02.2022 apart from submitting that the same is in violation of the order dated 09.09.2021 passed by this Court in the earlier Writ filed. This contention is totally misplaced as the only direction in the said order was to sympathetically consider the fresh OTS proposal to be offered by the petitioner, which as per the counsel is only a sum of Rs.4,50,000/- plus Rs.9,47,000/- aggregating Rs.13,97,000/- towards the outstanding liability which around Rs.33,00,000/- as on today with further realizable value of the secured assets also being much more than being offered as submitted by the learned counsel for the Bank. The further prayer for issuing a mandamus for an OTS settlement is also not sustainable in the light of the recent judgment passed by the Hon'ble Supreme Court in ***Bijnor Urban Cooperative Bank Limited, Bijnor and others Vrs. Meenal Agarwal and others, AIR 2022 SC 56***.

5. In view of the above, the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

27th July, 2022
Cuttack