HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18507 of 2014

Avoy Kumar Das …. ***Petitioner***

Mr. P. K. Rath, Advocate along with
Mr. Adhiraj Behera, Advocate

-versus-

Authorized Officer, The Baripada Urban Co-operative Bank Ltd., Baripada, Mayurbhanj …. ***Opp. Party***

None

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
18.11.2022

(Hybrid Mode)

Order No.

04. **1.** Petitioner is stated to have availed a Cash Credit Loan facility to the extent of Rs.16 Lakhs from the Baripada Urban Co-operative Bank Limited, Baripada, District-Mayurbhanj on 27th June, 2002. To secure the loan, equitable mortgages of two immovable properties were created as collateral security on 17th July, 2002. Due to financial indiscipline, the loan account was classified as NPA and a Demand Notice dated 4th August, 2014 issued under Section 13(2) of the SARFAESI Act, 2002 (for short, "the Act, 2002") recalling the outstanding liability of Rs.42,80,204/- due as on 31st July, 2014 along with future interest and incidental expenses etc.

2. The prayer made in the present Writ Petition is for challenging the aforesaid Demand Notice dated 4th August, 2014 (Annexure-1), with a further prayer for the Bank to settle the account under the OTS policy to be framed in pursuant to the directions issued by the Reserve Bank of India (R.B.I.) under Section 35A of the Banking Regulation Act, 1949.

3. This Court while issuing notice on 16th October, 2014 passed the following interim direction in Misc. Case No.16415 of 2014:

> *"Heard.*
>
> *As an interim measure, we direct that no coercie action shall be taken by the opposite parties against the petitioner till the next date subject to the petitioner depositing a sum of Rs.5,00,000/- (five lakh) with the bank within a period of four weeks from today.*
>
> *Urgent certified copy of this order be granted on proper application."*

4. At the time of hearing, Mr. Behera, learned counsel appearing for the petitioner states that they have no instructions regarding payment made, if any, by the petitioner in compliance of the aforesaid interim order nor for pursuing the matter any further.

That apart, we find that the Government of Odisha, Cooperation Department had written a memo dated 4th June, 2014 requesting the R.B.I. for approving an OTS policy and a realistic revival plan for the Baripada Urban Co-operative Bank, which had gone under liquidation. The approval for sanctioning of an OTS policy was for recovering the outstanding dues to whatever extent from the recalcitrant defaulters in order to contribute to the revival of the Bank. There is no such information available as to any OTS policy was actually approved or not.

It appears that by efflux of time, the petitioner has lost interest in pursuing the present Writ Petition perhaps either on account of a settlement arrived at or the recoveries having been effected. It is well settled that the scheme of the Act, 2002 does not contemplate any intervention at the preliminary stage of issuance of a Demand Notice, which provides no cause of action to file any appeal under Section 17 of the Act, 2002 before the DRT much less a Writ Petition under Article 226 of the Constitution.

5. In view of the above, the present Writ Petition stands dismissed.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Sipun

18th November, 2022
Cuttack