IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.10197 of 2012

Authorised Officer, HDFC Bank Ltd. .... ***Petitioner***

Mr. Nalini Kanta Dash, Advocate

-versus-

Authorised Officer, Bank of India, Regional Office .... ***Opposite Party***

Mr. G.D. Kar, Advocate for Bank

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER (Oral)
14.10.2022

Order No.

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

1. The Petitioner, HDFC Bank Limited, has come up before this Court for the following reliefs:-

> **"***In view of the submissions made above the Petitioner pray that the Hon'ble Court may kindly issue RULE NISI calling upon the Opposite Parties to file show cause as to why the impugned decision in letter dated 24th January, 2012 under Annexure-1 shall not be quashed:-*
>
> *And if the Opposite Parties filed no show cause and file insufficient cause then the said Rule NISI be held absolute and the Hon'ble Court be pleased enough to issue an appropriate writ and quash the letter dated 24th January, 2012 under Annexure-1 and direct the Opposite*

Party to transfer the balance amount out of the sale proceed after adjusting its loan amount;

And pass such other writ/writs, order/orders and direction/directions that may deem fit and proper under the facts and circumstances of this case;

And for which act of your kindness the petitioner as in duty bound shall ever pray. ”

2. In 2007, one Sri Rabindra Kumar Sahoo as Principal Borrower and Smt. Manorama Sahoo as co-borrower were sanctioned with loan against immovable property for an amount of Rs.8,96,000/-. The aforesaid co-borrower Smt. Manorama Sahoo created equitable mortgage in favour of the Bank against the loan availed by Sri Rabindra Kumar Sahoo. Due to default in repayment of the loan, the said loan account was declared as NPA and the Petitioner initiated action under Section 13(2) of the SARFAESI Act, 2002 on 17th December, 2009, recalling an amount of Rs.9,62,360.34 outstanding as on 12th December, 2008. Since there was no response, the petitioner-HDFC bank invoked power under Section 13(4) of the said Act and assumed symbolic possession.

3. While the Petitioner-HDFC Bank was intending to take physical possession of the mortgaged property, it has come to its knowledge that the Opposite Party-Bank of India has published a notice for sale of very same mortgaged property on 26th September, 2010 in the Odia daily "The Sambad".

4. Challenging the said notice for sale issued by the Bank of India, the Petitioner had approached this Court in W.P.(C) No.

18385 of 2010, which was disposed of *vide* order dated 23rd June, 2011. Relevant portion of this order is quoted hereunder:-

> "*As the reserve price for the property has been settled by O.P. No.1 at Rs.20.00 lakhs, in our considered opinion, it would be proper to allow O.P. No. 1 to proceed with the sale in terms of Annexure-4. Accordingly, we allow O.P. No. 1 to proceed with the sale in presence of the Petitioner. Out of the sale proceeds, O.P. No.1 shall first adjust its loan amount and thereafter, out of the balance sale proceeds, the amount due to the Petitioner shall be paid for adjustment of the loan dues of O.Ps. 2 & 3. After such adjustment, if any amount remains, that shall be refunded to the borrower. We may make it clear that the property in question shall not be sold at a price less than the reserve price fixed by O.P. No. 1. There is any shortfall; it would be open to the Petitioner to proceed against the borrower in accordance with law.*"

5. It is alleged by the Petitioner that the Opposite Party-Bank of India had conducted the sale but in absence of the present Petitioner, which is not in consonance with the direction of this Court passed in W.P.(C) No. 18385 of 2010. However, by issue of letter dated 24th January, 2012, the Opposite Party has intimated the Petitioner that it is due to get Rs.1,27,562.50 out of the sale proceeds of the mortgaged properties of Smt. Manorama Sahoo. The said letter dated 24th January, 2012, which is subject matter of challenge in the present writ petition reads thus:-

"Ref No.KHN;ADV:11-12/401 Date-24/01/2012
The Branch Manager
HDFC Bank Ltd
A/62/1, Unit-8, Nayyapali
Bhubaneswar-751012

Dear Sir,

Re: Auction of property of Manorama Sahoo
…………………………………….

We refer your letter dated 12/01/2012. As desired by you we enclose a statement of the loan account of Smt Manorama Sahoo. After adjustment of all our loan dues and other charges the balance amount of Rs.1,27,562.50 will be paid to you. Please collect the cheque from us and as desired by the auction purchaser please handover the necessary original documents of the said property available in your custody.

Thanking you

Yours truly
Sd/-
Authorised Officer"

6. Mr. Nalini Kanta Dash, counsel for the Petitioner submitted that the Opposite Party has violated the order dated 26th September, 2010 passed in W.P.(C) No. 18385 of 2010 and the sale conducted by the Opposite Party-Bank of India is not justified and therefore, the letter dated 24th January, 2012 is liable to be quashed.

7. Mr. Gurudutta Kar, counsel for the Bank submitted that much water has been flown over in the meantime. The Bank of India had the first charge over the mortgaged property and this Court has allowed it to sale the property. This Court while passing the order dated 26th September, 2010 has categorically stated out of the sale proceeds the Bank of India shall first adjust their loan amount and out of the balance proceeds, the amount due to the Petitioner-HDFC Bank would be paid. This Court also observed that in the event of shortfall, the Petitioner was free to proceed with the borrower in accordance with law. So the letter dated 24th

January, 2012 is only an intimation to HDFC Bank by the Bank of India indicating that the balance amount to be paid to the Petitioner after adjustment of its loan dues and other charges. So it cannot be the basis to challenge as the letter of intimation cannot give rise to any cause of action for HDFC Bank Limited to institute a case against the opposite party-Bank of India.

8. This Court finds that had there been any violation of the order dated 26th September, 2010 passed in W.P.(C) No. 18385 of 2010, the Petitioner should have filed the contempt petition.

9. However, in the garb of challenging mere communication dated 24th January, 2012 the HDFC Bank Limited cannot maintain second writ petition. Therefore, the present writ petition is not liable to be entertained and hence, the writ petition is dismissed.

However, the Petitioner is free to receive balance amount after adjustment out of the sale proceeds by the Bank of India.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant October 14, 2022 Cuttack