

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 9143 of 2022

Sidny Bibi

....

Petitioner

Mr. Budhadev Routray, Sr. Advocate &
Mr. R.P. Kar, Advocate

-versus-

***Collector-cum-District Magistrate,
Balasore & Others***

....

Opposite Parties

Mr. Sunil Swain, Advocate for Bank
Mr. Gautam Siddique & Mr. R. Jena,
Advocates for Caveator

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
06.05.2022

Order No.

- 04.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** The Petitioner- Sidny Bibi is the proprietor of M/s Freedom Steel, which had availed loan facility for a sum of Rs.1.00 crore from the UCO Bank, Ganeswarpur Industrial Estate Branch, Balasore in the year 2018. Due to financial indiscipline, the loan account was declared as NPA on 31st May, 2021 and the recovery process under the SARFAESI Act, 2002 was initiated.
 - 3.** The instant petition has been filed challenging the E-Auction notice dated 9th March, 2022 fixing the auction sale of the secured assets, offered as collateral security on 25th March, 2022.

4. The primary contention is that the fifteen days clear notice has not been personally served upon the borrower and thereby violated the mandatory provisions provided under Sub-rule (6) of Rule 8 read with Sub-rule (1) of Rule 9 of the Security Interest (Enforcement) Rules, 2002. In support, reliance is placed upon the judgment of the Hon'ble Supreme Court in case of *Mathew Varghese vs. M. Amritha Kumar and Ors; (2014) 5 SCC 610=AIR 2015 SC50*.

5. Upon notice, the Bank has filed an affidavit dated 27th April, 2022 to which a rejoinder affidavit dated 6th May, 2022 has been filed in Court and copy furnished taken on record.

6. Counsel for the Petitioner by referring to the contents of the Para 5& 6 of both the affidavits submits that a serious dispute has arisen in respect of alleged personal service by engaging the services of the Enforcement Agency which is not permitted in view of the scheme of the Act.

7. He however concedes that an SA challenging the process of conducting the present auction sale already stands filed and thus prays for permission to withdraw the petition in order to pursue the remedy, if advised, even by amending already pending SA before Debts Recovery Tribunal.

8. To the aforesaid prayer, Mr. Sunil Kumar Swain, counsel for the Bank has no objection.

9. In view of the above, the writ petition is dismissed as withdrawn with the aforesaid liberty.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

May 6, 2022 Cuttack

