IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11678 of 2022

Manorama Bhuyan and Another .... ***Petitioners***

Mr. S. B. Mohanty, Advocate

-versus-

Regional Manager, S.B.I. and Others .... ***Opp. Parties***

Mr. Subrat Kumar Mohanty, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No.	**14.09.2022**
03.	This matter is taken up through virtual/physical mode.

1. Petitioner no.1 is the principal borrower and petitioner no.2 (Sri Sitanshu Sekhar Bhuyan) is the guarantor of a loan facilities availed from State Bank of India, SMECCC Branch, Madhupatna, Cuttack/Opposite Party No.2, in the year 2015. Due to non-payment of the instalments, the Bank is stated to have filed O.A. No.104 of 2014, which was decided on 18th August, 2015. It transpires that the Recovery Officer, DRT, Cuttak has proceeded to attach the properties for executing the decree passed in favour of the Bank. The present Writ Petition has been filed with the following prayer:

"(i) To admit this Writ Application;

(ii) To quash the Notice dtd. 1.3.2022 (Annexure-11) issued by the Recovery Officer, DRT, Cuttack

regarding attachment of immovable properties as scheduled in the said Notice which are not mortgaged properties in connection with the loan.

(iii) To quash the confiscation Notice dtd. 16.4.2022 (Annexure-12) issued by the S.B.I., SMECC Branch, Link Road, Cuttack.

(iv) To direct the Recovery Officer, D.R.T., Cuttack to restore the properties as mentioned in the attachment notice and confiscation notice in favour of the petitioners and her account be closed in terms of the payment as per the auction sale certificate and return the documents to the petitioners after closure of the account."

2. On the previous date of hearing, this Court had directed the Bank to file an affidavit in order to ascertain as to how much amount remains to be recovered after setting off the amounts of sale price received from the auction sale of the mortgaged property under the SARFAESI Act, 2002. An affidavit dated 16th August, 2022 of the Manager concerned has been filed in the Court today, whereby it elucidated that a sum of around Rs.28,46,108/- plus other charges remain due as on 12th August, 2022 after the set off.

Learned counsel for the Bank further submits that for the reliefs claimed herein, the appropriate statutory remedy is to file an appeal under Section 30/30-A of the Recovery of Debts and Bankruptcy Act, 1993 (for short, "the Act,1993") before the DRT and thus, the present Writ Petition is not maintainable.

3. We are in total agreement with the learned counsel for the Bank and find that the present Writ Petition cannot be entertained in the light of the alternative remedy of appeal provided under Section 30 subject to conditions provided under Section 30-A of the Act, 1993 before the Tribunal.

3. In view of the above, the Writ Petition is accordingly dismissed relegating the petitioner to seek his statutory remedy in accordance with law.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Sipun

14th September, 2022
Cuttack