IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11912 of 2022

Sunajhario Toppo ... ***Petitioner***

Mr. Soumya Ranjan Das, Advocate

-versus-

The Urban Co-operative Bank Ltd. & others ... ***Opposite Parties***

Mr. Ayush Kulraj, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
12.10.2022

Order No.

03. This matter is taken up through virtual/physical mode.

1. The petitioner has sought for issue of writ of *certiorari* invoking jurisdiction under Article 226 of the Constitution of India with a prayer to set aside the Order dated 20.12.2021 passed by the District Magistrate, Sundargarh *vide* Annexure-4 whereby the Superintendent of Police, Sundargarh is requested in exercise of power under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") to provide necessary police assistance in taking possession of the assets in respect of Revenue Khata/Holding/Khatian No. 119/81, Plot No.260/1428, Area: Ac.0.15 dec., Mouza: Bonai, Tehsil: Lathikata, P.S.: Lathikata, District: Sundargarh standing in the name of husband of the petitioner, late Parameswar Mahakud, and issue writ of *mandamus* to opposite parties-bank to allow the petitioner to pay the outstanding dues in suitable instalments.

2. The petitioner's husband, since dead, availed personal loan of Rs.5,00,000/- from the Urban Co-op. Bank Ltd., Rourkela and created collateral security by mortgaging aforesaid property. Due to financial indiscipline, the loan account being classified as NPA, notice dated 2nd May, 2014 under Section 13(2) of the SARFAESI Act was issued recalling an amount of Rs.4,72,193/- outstanding as on that date. Non-response of the same led to assumption of symbolic possession under Section 13(4) *vide* Notice dated 13.12.2017 of the secured asset.

3. Challenging said possession notice the petitioner earlier approached this Court in W.P.(C) No.9180 of 2018 which came to be disposed of on 22.06.2018 with the following order:

"Learned counsel for the opposite party no.1-Bank on instruction submits that the present outstanding loan due against the borrower is about Rs.6.70 lakhs, after adjustment of all payments received. It is submitted that in spite of interim order dated 30.5.2018, the petitioner has failed to deposit Rs.1.50 lakhs, as had 2 been directed therein. It is fairly submitted that if the petitioner deposits a substantial amount towards down payment and apply for one time settlement of the loan account, the Bank shall consider the same in terms of its existing guidelines for such settlement and as has been done in other similar cases.

Considering the submissions made, it is directed that in the event the petitioner deposits a sum of Rs.1,75,000/- (Rupees One lakh seventy five thousand) within four weeks hence with the opposite party no.1-Bank along with an application for one time settlement of the loan account, the Bank shall consider the same in terms of its existing guidelines and as has been done in similar other cases and take a decision thereon within four weeks thereafter.

Till then, no coercive action shall be taken against the petitioner pursuant to the possession notice dated 13.12.2017, as per Annexure-2 to the writ petition.

It is needless to say that if the petitioner does not deposit the amount as directed above or default in making payment of the amount to be determined by the Bank under one time settlement, the Bank shall be at liberty to take recourse to such steps as provided in law.

Writ petition is accordingly disposed of."

4. In the present case, the petitioner has come up before this Court by way of writ petition challenging the order dated 20.12.2021 passed by the District Magistrate, Sundargarh under Section 14 of the SARFAESI Act. This Court while issuing notice, passed the following order on 11.05.2022:

"2. The Petitioner is the wife and successor in interest of a defaulting borrower, who is faced with an outstanding liability of around Rs.10.00 lakhs as on today. The recovery process under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act, 2002') is at the stage of taking over the actual physical possession pursuant to the order dated 20th December, 2021 passed by the Collector & District Magistrate, Sundargarh under Section 14 of the Act, 2002. The mortgaged property, i.e. sole residential house has not yet been put up for auction sale.

3. Mercy plea is raised for grant of some reasonable time to clear the entire outstanding liabilities in order to save the residential house by the widow. The Petitioner is prepared to deposit a substantial amount as upfront with an undertaking to pay the remaining balance within next four months.

4. Issue notice for 22nd June, 2022."

5. On 22.06.2022, on the submission of the counsel for the bank that no deposits have been made in terms of order dated 11.05.2022, this Court clarified by passing following order:

> *"2. Learned counsel for the Bank stats that the interim directions for deposit, passed by this Court on 11.05.2022 have not been complied with. He prays for time to file a reply.*
>
> *3. List on 12.10.2022.*
>
> *4. It is clarified that, if the said amount has not deposited as stated by the learned counsel for the Bank, the Bank would be free to proceed in accordance with law."*

6. Today on resumed hearing, learned counsel for the opposite parties-bank has reiterated that no deposit has been made in terms of interim direction issued by this Court. Sri S.R. Das, learned counsel for the petitioner has submitted that he has no instruction in the matter.

7. In view of the aforesaid submission counsel for the respective parties and taking into account that there has been non-compliance of order passed by this Court, no further indulgence is required to be shown in the matter. Accordingly, the writ petition is dismissed and consequently, the interim order(s) is vacated.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant October 12, 2022
Cuttack