IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11075 of 2019

Sunil Kumar Khuntia and another .... ***Petitioners***

Mr. Anam Charan Panda, Advocate

-versus-

Branch Manager, Allahabad Bank, Aruha Branch, Aruha and others .... ***Opposite Parties***

Mr. Anshuram Mishra,
Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER

10.05.2022

Order No.

08.

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

2. The Petitioners by way of the writ petition invoked the provisions of Article 226/227 of the Constitution of India with the following prayer:-

> *"It is therefore prayed that in the above circumstances of the case and in the interest of justice, notices may be issued to the O.Ps calling upon them to show cause as to why a writ of mandamus shall not be issued to them directing them to pay back 1/3rd share of amount due along with interest as demanded in Annexure-2 series and O.Ps. failing to show cause or showing no cause issue a writ in the nature of mandamus or any other writ directing to pay back 1/3rd of surplus amount each to the petitioners of the surplus amount of Rs.37,99,440/- (as admitted in annexure-3 series) And/ or any other order may be passed in the interest of justice. And for which act of kindness, the petitioners shall remain as in duty bound and ever pray."*

3. The fact as available on record shows that M/s. Shiva Enterprisers, Kalan in the district of Jajpur, partnership firm constituting Sri Sunil Kumar Khuntia (Petitioner No.1), Sri Rabindra Khuntia (Petitioner No.2), Ashok Kumar Khuntia, Jagabandhu Khuntia and Rambha Khuntia, availed cash credit

loan from the Allahabad Bank, Aruha Branch, Aruha-Opposite Party No.1 in 1994 mortgaging the landed property standing jointly in the name of Sri Sunil Kumar Khuntia, Sri Rabindra Khuntia and Sri Ashok Kumar Khuntia.

4. The Opposite Party-Bank in order to recover the outstanding amount on account of default of the borrower in repayment of loan amount sold the said mortgaged property on 31.12.2012. Since the surplus money after recovery of outstanding loan amount from the sale proceeds being not refunded due to non-cooperation of Sri Ashok Kumar Khuntia, the petitioners, namely, Sri Sunil Kumar Khuntia and Sri Rabindra Khuntia have come up before this Court in the afore-noted writ petition craving for issue of writ of *mandamus* directing the Opposite Party-Bank to release 1/3rd share of surplus amount to each of them.

5. Though the Petitioners have stated the surplus amount to be at Rs.37,99,440/- in the writ petition, in the counter affidavit filed by the Opposite Party-Bank it is asserted that such surplus amount would be at Rs.33,71,207/-.

6. Mr. Anshuman Mishra, the learned counsel for the Bank referring to a letter dated 05.03.2013 addressed to Sri Sunil Kumar Khuntia, Sri Rabindra Khuntia and Sri Ashok Kumar Khuntia, which forms part of the counter-affidavit, submitted that the bank had intimated all the three (including the Petitioners) for taking back the surplus amount. It is further affirmed in the counter-affidavit that as per policy of the bank, surplus amount has been kept in the Bank Internal Office Accounts as per the SoP on Internal Office Account include BGL Accounts and the Internal Office Current Accounts.

7. This Court does not wish to go into the *inter se* dispute with regard to surplus amount. However, considering the fact that the surplus amount has been lying with the bank since 2013 and finding that all the three brothers, namely, Sri Sunil Kumar Khuntia, Sri Rabindra Khuntia and Sri Ashok Kumar Khuntia have equal right, this Court directs the Bank to disburse proportionate 1/3rd share to each of the petitioners, namely Sri Sunil Kumar Khuntia and Sri Rabindra Khuntia. Merely because Sri Ashok Kumar Khuntia does not cooperate with other two brothers, namely, Sri Sunil Kumar Khuntia and Sri Rabindra Khuntia (Petitioners herein), the bank should not and need not withhold legitimate shares of other two brothers.

8. It is relevant to notice sub-section (7) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act, 2002') which is to the following effect:

> *"Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests."*

9. Perusal of said sub-section indicates that person entitled "in accordance with his rights and interests" to the residue money is required to be disbursed with such amount after deducting expenses, charges and costs and other adjustments from the sale consideration.

10. For the antagonistic attitude of Sri Ashok Kumar Khuntia, the Petitioners, namely Sri Sunil Kumar Khuntia and Sri Rabindra Khuntia should not have been made to suffer and the Opposite Party-Bank should have apportioned $1/3^{rd}$ share for each of the Petitioners out of the surplus amount and disbursed the same in their favour instead of withholding the same for such a long period since 2013. It is noteworthy that when the bank took the property on mortgage held jointly by Sri Sunil Kumar Khuntia, Sri Rabindra Khuntia, and Ashok Kumar Khuntia as security and by selling said property liquidated the loan amount, the surplus amount should have been returned in equal share to each of the mortgagers including the Petitioners.

11. Thus, interest of justice would be best served, if the Opposite Party-Bank is directed to disburse the surplus amount in favour of the Petitioners (Sri Sunil Kumar Khuntia and Sri Rabindra Khuntia) forthwith, who are entitled to $1/3^{rd}$ share each. So this Court directs. In the event of delay, in disbursal of 1/3 share of such surplus amount to both the Petitioners, the bank shall be held liable to refund the amount along with interest @ 6% per annum.

10. With the aforesaid observation and direction, this writ petition is disposed of.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Jyostna May 10^{th}, 2022
Cuttack