IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16656 OF 2022

Brundabana Sahoo .... ***Petitioner***

Ms. Gautami Budhapriya, Advocate

-versus-

Managing Director, the Odisha State Co-operative Bank Ltd. and another .... ***Opp. Parties***

Mr. Satya Ranjan Pati, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **11.11.2022**

5. 1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition seeks for a direction to the Managing Director, The Odisha State Co-operative Bank Ltd.-Opposite Party No.1 to allow him to operate his SB Account No.1559 maintained with the Opposite Party No.1-Bank.

3. It is submitted by Ms. Budhapriya, learned counsel for the Petitioner that the Opposite Party No.2, who is a permanent employee of Rourkela Steel Plant (SAIL) had obtained a financial assistance from the Rourkela Branch of the Odisha State Co-operative Bank Ltd. (for short 'the Bank'). The Petitioner, who is also an employee of Rourkela Steel Plant, was a guarantor to this said loan. For non-payment of loan by the Opposite Party No-2, Dispute Case No.36 of 2015 under Section 68 of the Odisha Co-operative Societies Act, 1962 was initiated. The Deputy Director (Statistics), Bhubaneswar by his order dated 20th March, 2020 under Annexure-1 disposed of the said dispute case holding as under:

*"**<u>Extract of Order dated : 20.03.2020</u>***
xx xx xx xx

In the above circumstances, on hearing the case and perusal of records, it is ordered that the defendants are jjointly and severally liable to pay the Plaintiff Bank as amount of Rs.5,02,718/- (Rupees Five Lakh Two Thousand Seven Hundren Eighteen only) as on dated 18.10.2017 with further interest @ 8.25% P.A. and penal interest @ 2% from the date of overdue to be calculated till complete realization of the loan. However, as the Principal Borrower is still in service, the Plaintiff Bank should take steps for realization of its loan dues through attachment of the salary of the Principal Borrower. Further, the then Branch Manager is also to be prosecuted for his negligence in duty. After exhausting all the process, the Plaintiff Bank can proceed against the Defendant No.2.

Pronounced in open Court, given under my hand and seal this day, the 20th March, 2020. Communicate all parties concerned.

Sd/-
Deputy Director (Statistics)"

4. Ms. Budhapriya, learned counsel for the Petitioner, therefore, submits that the Bank, at the first instance, should have taken steps for realization of the loan amount by attaching the salary of the Opposite Party No.2. Instead of complying with the said order, the Bank did not allow the Petitioner to operate his SB Account No.1559 maintained with the Rourkela Branch of the Bank. It is her submission that in the order under Annexure-1 communicated to the Petitioner, it has been clarified that after exhausting all the process stated in the said order, the Bank can proceed against the Defendant No.2, namely, the Petitioner. Thus, without taking any step as elaborated in the said order, the Bank should not have made the SB Account No.1559 of the Petitioner in-operative. In view of the above, she submits that the Bank should permit the Petitioner to operate his aforementioned account with immediate effect.

5. Mr. Pati, learned counsel for the Opposite Party No.1-Bank refuting such submission contends that in the opening line of the order, the Deputy Director (Statistics) has clarified that both the Plaintiff and Defendant No.2 being the loanee and guarantor are jointly and severally liable to repay the loan amount. Hence, the Bank has committed no error in not allowing the Petitioner to operate his SB Account No.1559. It is his submission that the Bank has also lodged F.I.R. against the loanee for obtaining NOC from the Bank by committing forgery. He, however, conceded that there is no allegation in the F.I.R. against the Petitioner. Since the Petitioner and Opposite Party No.2 are jointly and severally liable to repay the loan and the loan amount has not yet been recovered, the Petitioner should not be allowed to operate his account to facilitate recovery of the loan amount from the Petitioner, in the event, the same could not be recovered from the Opposite Party No.2.

6. Considering the submissions made by learned counsel for the parties, this Court finds that the Deputy Director (Statistics) in his order dated 20th March, 2020 in Dispute Case No.36 of 2015 has vividly described as to how the loan amount should be discovered. It has been clarified that since the loanee-Opposite Party No.2 is in service, step should be taken for recovery of the loan amount by attaching his salary. It has also been directed therein that the Branch Manager of the Bank is also be prosecuted for his negligence in duty. After exhausting the above, the Bank may take steps against the present Petitioner, who was Defendant No.2 in the said dispute case. Thus, it is very clear that the Bank at the first instance,

should take steps for recovery of the loan amount from the Opposite Party No.2 by attaching his salary. There is nothing in the order to stop the operation of the SB account of the Petitioner maintained with the Bank. Further, there is nothing on record which would reveal that the Bank has taken steps for adhering to the process spelt out in Annexure-1. By restraining the Petitioner from operating his SB Account No.1559 maintained with the Bank, the Branch Manager has not only violated the direction under Annexure-1, but has compelled the Petitioner to come to this Court. The Branch Manager should have acted sensibly in complying with the direction made under Annexure-1, more particularly, when Mr. Pati, learned counsel for the Opposite Party No.1-Bank submits that the order under Annexure-1 has not yet been challenged and it has attained its finality.

7. Accordingly, this writ petition is disposed of directing the Opposite Party No.1-Bank to allow the Petitioner to operate his SB Account No.1559 maintained with the Rourkela Branch of the Bank forthwith. The Managing Director of the Bank is directed to take action against the erring Officer, who has violated the direction made under Annexure-1 and restrained the Petitioner from operating his bank account.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

ms