

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16812 of 2022

M/s. S.M. Enterprises **Petitioner**
Mr. Avijit Pal, Advocate

-versus-

**UCO Bank, Asset
Management Branch,
Bhubaneswar** **Opp. Party**
Mr. Amrut Baral, Advocate for the Caveator-Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
11.11.2022
(Hybrid Mode)

Order No.

- 01.** **1.** Petitioner, a partnership firm since the year 2008 had availed a Cash Credit facility to the limit of Rs.75 lakhs, a term loan of Rs. 7.5 lakhs and WCTL of Rs.20 lakhs from the UCO Bank, Main Branch, Cuttack. The aforesaid loan facilities were secured by an equitable mortgage of two properties i.e. Flat-A-3 and Flat-B-3 situated and owned by five stated guarantors as per the description in the documents.
- 2.** Due to financial indiscipline, the loan accounts are declared as NPA leading to issuance of a demand notice dated 08.01.2014 under Section 13(2) of the SARFAESI Act, 2002 (for short “the Act, 2002”) recalling the aggregate outstanding liabilities of Rs.1,13,99,150/- due as on 31.12.2013 with future interest and expenses etc. The recovery process

initiated under the Act, 2002 led to taking of symbolic possession as also the actual physical possession of both the mortgaged properties and also issuance of E-auction sale notice dated 11.06.2022 (Annexure-1) fixing the auction sale of both the properties on 28.06.2022.

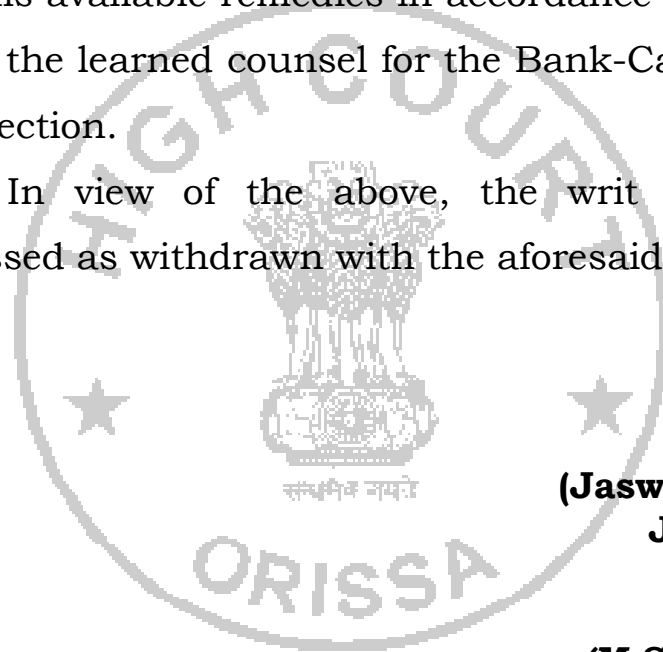
3. The challenge in the instant writ petition is to the aforesaid E-auction sale notice dated 11.06.2022 with a further prayer for directing the Bank to accept the OTS proposal offered on 24.06.2022 (Annexure-20) for a settlement at a price of Rs.21 lakhs, which has been rejected vide letter dated 27.06.2022 (Annexure-21), thus the ancillary challenge is to this cancellation letter dated 27.06.2022 as well.

4. Learned counsel for the petitioner agrees that the plea of under valuation of the properties sold pursuance to the aforesaid sale notice can be properly adjudicated upon leading of credible evidence, for which the appropriate remedy would be to approach the DRT, Cuttack by filing an application under Section 17 of the Act, 2002 and by impleading the successful auction purchaser-Sri Barun Mishra, in whose favour even the sale certificate *qua* property No.1 i.e. Flat-A-3 stands issued on 25.07.2022 along with handing over of actual physical possession. It transpires that the property No.2 i.e. Flat-B-3 was subsequently successfully auctioned on 29.08.2022 in favour of one Mr. Roshan Sharma, the highest bidder who has deposited 25% of the bid amount. It

cannot be denied that for the challenge even to the said auction proceedings, the appropriate remedy would be before the DRT. As regards, the Right of Redemption before the sale deed is registered, the petitioner can also raise the said plea in presence of the auction purchasers before the DRT.

5. In view of the aforesaid developments, learned counsel for the petitioner prays for permission to withdraw the writ petition to enable the petitioner to seek his available remedies in accordance with law to which the learned counsel for the Bank-Caveator has no objection.

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



(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Basudev

11th November, 2022
Cuttack