IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.12084 OF 2017

M/s. Sanitary Emporium and others .... ***Petitioners***

Mr. Ramesh Agarwal, Advocate

-versus-

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

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No. **22.11.2022**

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

2. This writ petition has filed with the following prayer:

> *"It is therefore most respectfully prayed that in the aforesaid facts and circumstances appropriate Writ/Writ (s) may be issued in the nature of mandamus directing opposite parties to consider the request of the petitioner for:*
>
> *i) Intimating the total dues with interest as on 04.11.2006, as per the Order at Annexure-4.*
>
> *ii) Accept the amount of Loan as on 04.11.2006, considering the facts that the opposite parties never responded to the letters of the Petitioners.*
>
> *iii) Release the mortgaged property of the Petitioner No.3.*
>
> *And such other relief/reliefs to which the petitioner may be found entitled to be granted in favour of the Petitioner.*
>
> *And for this act of kindness, the Petitioner shall ever pray."*

3. Mr. Agarwal, learned counsel for the Petitioners submits that the Petitioner No.1 had opened a cash credit account with a limit of Rs.5,00,000/- with the Odisha State Co-operative Bank Ltd., Cuttack Road Branch, Bhubaneswar-Opposite Party No.2 in the year, 1998. After observing formalities, the Petitioner No.1

started operating cash credit account. In the year, 2000, the Petitioners could notice that there was some irregularities in the calculation of interest in the loan account by charging interest @ 17.25%. Subsequently, the cash credit account was transferred to Saheed Nagar Branch on 10th September, 2021. Request of the Petitioner No.1 to resolve the discrepancy went in vain. Accordingly, the Petitioner No.1 submitted a complaint before the Banking Ombudsman, Bhubaneswar on 27th January, 2004 under Annexure-3. The Petitioners also requested for settling the loan amount through OTS with simple interest @ 12% per annum, which was not accepted. The Banking Ombudsman, Bhubaneswar disposed of the complaint petition on 4th February, 2004 holding it to be not maintainable. Subsequently, notice under Section13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') was issued to the Petitioner on 12th February, 2004. Assailing the same, the Petitioners filed W.P.(C) No. 1312 of 2004 in which notice issued under Section 13(2) of the Act was stayed subject to deposit of Rs.1,00,000/-. Subsequently, the Opposite Parties-Bank raised a dispute under Section 68 of the Orissa Co-operative Societies Act, 1962 for recovery of the amount before the Assistant Registrar of Cooperative Societies, Bhubaneswar. Said dispute case was disposed of vide order dated 4th November, 2006 directing the Opposite Parties-Bank to reconcile the loan account by calculating interest @ 12% per annum. Subsequently, vide order dated 9th May, 2008, this Court also set aside the notice issued under Section 13(2) of the SARFAESI Act. In the meantime, the Petitioners have already paid the principal amount and have requested the Opposite Parties-Bank a number of times to calculate the interest @ 12% per annum and communicate the same to the Petitioners to enable them to deposit the same, but there is no response from the Opposite Parties-Bank. Hence, this writ petition has been filed seeking for the aforesaid relief.

4. None appears for the Opposite Parties-Bank although they are represented by learned counsel. Counter affidavit has also not been filed by the Opposite Parties-Bank.

5. In view of the above, this Court is constrained to accept the contention of Mr. Agarwal, learned counsel for the Petitioners applying the principles of doctrine of non-traverse.

6. Accordingly, this writ petition is disposed of with a direction to the Opposite Parties-Bank to calculate the interest @ 12% per annum as directed by Assistant Registrar of Cooperative Societies, Bhubaneswar vide order dated 4th November, 2006 under Annexure-4 and to communicate the same as expeditiously as possible preferable within a period of one month from the date of production of certified copy of this order. On payment of outstanding dues, the mortgaged property of the Petitioners shall be released forthwith. The Court also expresses its displeasure for non-cooperation of Opposite Parties-Bank in assisting the Court for disposal of the writ petition.

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

(K.R. Mohapatra)
Judge

bks