

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17962 of 2022

Pradeep Kumar Mahanta **Petitioner**
Mr. Ashok Kumar Apat, Advocate

-versus-

**Chief Manager of Punjab
National Bank of Sastra
Division, Balasore and
Another**

.... **Opp.Parties**
Mr. M.K. Mohapatra-1, Advocate for the Bank

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN**

**ORDER (Oral)
06.09.2022**

Order No.

- 02.** 1. This matter is taken up through virtual/physical mode.
2. The Petitioner is a defaulting borrower of two term loan facility totaling an amount of Rs.26,89,332/- in the year 2015-2019. Due to financial indiscipline, both the loan accounts were declared NPA on 1st March, 2021 leading to issuance of a demand notice dated 18th August, 2021 issued under Section 13(2) of the SARFAESI Act, 2002 (for short “the Act, 2002”) recalling the outstanding liability of Rs.32,03,312/- as on 31st July, 2021. Subsequently, symbolic possession was assumed on 27th October, 2021 by issuance of a demand notice

under Section 13(4) of the Act, 2002. The application for settlement of the OTS was not entertained due to non-deposit of 15% upfront amount in terms of the policy (only 10% was deposited). The mortgaged property has been put to auction sale for 15th February, 2022 vide sale notice dated 14th January, 2022 (Annexure-5), which was made a subject matter of challenge by filing W.P.(C) No.2787 of 2022. In the said writ petition an order dated 10th February, 2022 was passed which reads as under:-

“2. Learned counsel for the Petitioner submits that his client is ready and willing to deposit another 5% in terms of the Special OTS Scheme dated 13th June, 2021.

3. Issue notice to the Opposite Parties for 16th February, 2022.

4. Mr. Manoj Kumar Mohapatra-1, learned counsel appears and waives off notice on behalf of Opposite Parties/bank.

Let requisite number of copies of the Writ Petition be served upon him by tomorrow (11.02.2022).

In the event of the Petitioner depositing a sum of Rs.1,40,000/- (Rupees One Lakh Forty thousand) before 15th February, 2022, the successful bid, if any, shall not be confirmed without the leave of the Court.”

3. The said Writ Petition was disposed of as infructuous vide order dated 06.07.2022 on account of the petitioner having not deposited the required amount in terms of the Order dated 10.02.2022 as

also for lack of any intending bidder on the auction fixed for 15.02.2022. Thereafter, a notice dated 04.06.2022 (Annexure-8) was issued by the Bank requesting the petitioner to deposit the outstanding amount, failing which, the mortgaged property shall be put to auction. It is this notice which is a subject matter of challenge before this Court in the present Writ Petition.

4. By filing I.A. No.10335 of 2022, the auction notice dated 27.07.2022 has been sought to be placed on record at Annexure-10 fixing the sale of the mortgaged property on 10.08.2022. This Court on 03.08.2022 passed the following order:-

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

2. The only prayer being pressed is for grant of three months time to clear the entire outstanding liability of around Rs.36 lakhs as on today, with a deposit of Rs.20 lakhs as upfront money to show the *bona fides*.

3. Issue notice for 06.09.2022.

Mr. M.K. Mohapatra appears and waives of notice on behalf of the Opposite Parties. Requisite number of copies of the writ petition be served upon him.

4. As an interim measure, subject to deposit of sum of Rs.20 lakhs on or before 10.08.2022, the successful bid, if any, in the auction being conducted on 10.08.2022 shall not be confirmed

without the leave of the Court. The petitioner shall also file his undertaking, before the next date for clearing the entire outstanding liability before 31.12.2022 by payment of the remaining balance (after deposit of Rs.20 lakhs) in three equated monthly installments.

5. At the time of hearing today, learned counsel for the Bank points out that the petitioner has yet again not deposited the required amount in terms of the interim order. That apart, it is conceded that the auction fixed for 10.08.2022 has failed for want of any bidder.

6. In view of the above, we find no grounds to invoke our writ jurisdiction. It is also noticed that the petitioner has tried to invoke the equitable jurisdiction of this Court on two occasions without himself honouring the assurance is given before this Court.

7. Accordingly, we are not inclined to invoke our writ jurisdiction. Hence, the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

Basudev

6th September, 2022
Cuttack