IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19984 of 2022

M/s. Babuli Kumar Sishu,
Jharsuguda .... ***Petitioner***

Mr. Santanu Ku. Sarangi, Senior Advocate
along with Mr. B. M. Bhuyan, Advocate

-versus-

Chief Manager, UCO Bank,
Brajarajnagar Branch,
Brajarajnagar, District-
Jharsuguda & Another .... ***Opp. Parties***

Mr. Bhagaban Guin, Advocate for the Bank
Mr. Asish Mishra, Advocate for intervenor

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
15.12.2022

(Hybrid Mode)

Order No.

05. **1.** Petitioner, is a proprietorship concern of Sri Babuli Kumar Sishu, which had availed a Cash Credit facility to the limit of Rs.75 Lakhs by mortgage of three properties on 15th October, 2007 from UCO Bank, Brajarajnagar Branch, District-Jharsuguda. Due to financial indiscipline, the loan account was classified as NPA on 28th February, 2018 leading to issuance of a Demand Notice dated 17th September, 2018 under Section 13(2) of the SARFAESI Act, 2002 (for short, "the Act, 2002) recalling the total outstanding liability of Rs.65,71,86.71/- as on 28th February, 2018 plus further interest and incidental charges.

2. By filing the present Writ Petition, challenge has been laid to the e-auction notice dated 16th July, 2022 (Annexure-6) fixing the auction sale of all the three mortgaged properties on 22nd August, 2022. Further prayer is for a direction to give benefit under the OTS scheme.

3. Upon the willingness of the petitioner to clear the entire outstanding liability with an upfront deposit of more than 50% of such outstanding liability, this Court directed the Opposite Party/Bank to seek instructions.

4. It transpires that on the auction date on 22nd August, 2022, only one of the properties i.e. the residential house at Bhubaneswar owned by Bijaylaxmi Mohanty (one of the guarantors) was sold to the highest bidder for an amount of Rs.1,67,91,764/- and the highest bidder deposited a sum of Rs.42 Lakhs towards the 25% of the earnest money of the bid.

5. It is the stand of the petitioner that the guarantor –Bijaylaxmi Mohanty had already deposited a sum of Rs.80 Lakhs by 21st September, 2022 towards enforcing the right of redemption. It was also submitted that the petitioner-principal borrower was willing to compensate the successful bidder as well *qua* the amounts deposited by him. In view of such a submission, this Court directed the petitioner to deposit another sum of Rs.22 Lakhs on or before 20th October, 2022 vide order dated 26th September, 2022, which for ready reference reads as under:

> "***1.*** *Mr. Sarangi submits that there is some confusion in respect of the remaining outstanding liability as the guarantor has paid some substantial amount. He further submits that upon approaching the Bank, the particulars of the auction purchaser has also not been submitted.*
>
> ***2.*** *At the time of hearing, Mr. Kanungo, learned counsel for the guarantor who has filed a separate W.P.(C) No.23245 of 2022 in respect of self-same loan account submits that the total outstanding liability is around Rs.35 Lakhs as intimated to him whereas the guarantor has already deposited around Rs.80 Lakhs. The disputes thus being raised is in respect of the total outstanding liability.*
>
> ***3.*** *List this matter on 27.10.2022 along with W.P.(C) No.23245 of 2022.*
>
> ***4.*** *Let the Manager concerned file his affidavit indicating the total outstanding liability as on the date of auction and also the details of the successful bidder.*
>
> ***5.*** *In case, an amount of Rs.80 Lakhs, as stated above, already stand deposited and another sum of Rs.22 Lakhs are deposited on or before 20th October, 2022, then in that eventuality status quo shall be maintained till the next date of hearing. The deposited amount of Rs.22 Lakhs to be kept in an interest bearing No Lien Account.*
>
> ***6.*** *Issue urgent certified copy of this order as per rules."*

6. On the next date of hearing on 27th October, 2022, the following order was passed:

> "***1.****Learned counsel for the Bank prays for more time to file the required affidavit. He further concedes that a sum of Rs.22 Lakhs in compliance of the previous order dated 26th September, 2022 stands deposited.*
>
> ***2.*** *List on 15th December, 2022.*

> ***3.*** *The interim order passed earlier to continue till the next date of hearing."*

7. At the time of resumed hearing today, an affidavit dated 15th December, 2022 of Arup Chakraborty, Chief Manager-cum-Authorized Officer, UCO Bank, Brajarajnagar Branch, District-Jharsuguda/Opposite Party has been filed in Court, wherein it is stated that the borrower/guarantor had deposited a sum of Rs.60 Lakhs by 30th September, 2022 and another sum of Rs.22 Lakhs on 30th October, 2022 (in compliance of the directions passed by this Court). It is further stated that amount of around Rs.2,80,657/- still remains to be deposited for clearing the outstanding liability.

8. Mr. Sarangi, learned senior counsel for the petitioner, still vehemently asserts that a sum of Rs.80 Lakhs has already been deposited and it is wrongly stated that only a sum of Rs.60 Lakhs stood deposited by 30th September, 2022. He, however concedes that in view the dispute in respect of small amounts, the parties can be relegated back to sit together and reconcile the accounts and thereafter the action be taken whatever is to be paid or refunded and the loan account be closed.

Learned counsel for the Bank accepts such a recourse. He also agrees that since the highest bidder has only deposited a sum of Rs.25 Lakhs, the same shall be refunded along with interest to be borne by the petitioner.

9. In view of the aforesaid agreed stand, the present Writ Petition is disposed of as infructuous with the parties to reconcile the accounts and thereafter to do the needful to the satisfaction of all the concerned in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Sipun 15th December, 2022
Cuttack