

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 20806 of 2022

M/s. Radhaswami Rice Udyog,
Bhadrak

....

Petitioner

Mr. B.N.Mahapatra, Advocate

-versus-

AO (Chief Manager), UCO Bank,
Balasore and another

....

Opp. Parties

Mr. Sunil Kumar Swain, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER (Oral)
1.11.2022

Order No.

03.

This matter is taken up through Hybrid mode.

1. The petitioner is a proprietorship concern of Mrs. Khulana Sundari Sahoo who had availed a cash credit limit facility of Rs.3 lakh on 24.1.2006 from UCO Bank of Bhandari Pokhari Branch, Bhadrak. Due to non-servicing of the account, it was classified as NPA on 31.3.2014. Demand Notice was issued on 18.10.2014 under section 13(2) of the SARFAESI Act recalling the outstanding liability of Rs.2,90,167/- due as on 31.3.2014 along with future interest and incidental expenses, cost, charges etc. The symbolic possession of the mortgaged property was assumed by issuance of a notice dated 2.3.2015 under section 13(4) of the SARFAESI Act.

2. The challenge in the instant petition is to the E-auction sale of the mortgaged property fixed for 29.8.2021 by issuing a sale notice in news papers dated 27.7.2022.

3. Upon willingness of the petitioner to clear the outstanding liability within some reasonable time along with substantial amount as upfront deposit, this Court on 26.08.2022 passed the following order :

“2. The Petitioner, proprietorship concern, is a defaulter in two loan accounts classified as NPA on 31st March, 2022 with the outstanding liabilities having swelled to more than Rs.14.00 lakhs as on today.

3. It is submitted that the auction sale of the mortgaged property is fixed for 29th August, 2021 and mercy plea has been made for providing

some time to clear the outstanding liabilities with some substantial upfront payment to show bona fides to save sole residential house.

4. Issue notice for 27th September, 2022.

5. Mr. Sunil Kumar Swain, counsel for the Bank appears and waives off notice on behalf of the Opposite Parties.

Let requisite number of copies of the writ petition be served on him during course of the day.

6. As an interim measure, subject to the Petitioner depositing a sum of Rs.7,50,000/- on or before 29th August, 2022, the successful bid, if any, shall not be confirmed without the leave of the Court. The Petitioner shall also file an undertaking to clear the remaining balance within next four months."

4. On the next date of hearing, i.e. on 27.9.2022, following order was passed :

"1. Counsel for the Bank concedes that a sum of Rs.7,50,000/- in compliance of the direction passed by this Court was deposited and the auction fixed for the said date has failed for want of any bidder.

2. Mr. Bibekananda Mahapatra, proxy counsel on behalf of Mr. Sidhartha Swain, counsel for the Petitioner prays for time to file an undertaking regarding the time needed to clear the remaining balance.

3. List on 1st November, 2022.

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5. At the time of hearing today, learned counsel for the opposite party-Bank submits that the present petition has become infructuous on account of auction having failed as also more than two months having lapsed and the petitioner not having either filed an undertaking or deposit any further amount. In response, counsel for the petitioner has disputed the total amount that would be due as outstanding liability.

6. After hearing counsel for the parties, we find that the entire basis for issuance of notice was the willingness of the petitioner to clear the outstanding liabilities as disclosed by the bank within a time frame, from which the petitioner now is seeking to dispute and resale. Primary

challenge laid to the auction sale fixed for 29.8.2021, which having failed the said prayer also has been rendered infructuous.

Taking into consideration the entire conceptus of fact, we find no grounds to entertain the present writ petition any longer. However, liberty is granted to the petitioner to approach the bank for settlement under the regular OTS Policy qua the remaining outstanding balance by tendering a viable offer.

Accordingly, the writ petition is dismissed with the aforesaid liberty.

(Jaswant Singh)
Judge

(M.S.Sahoo)
Judge

November 1st, 2022
Cuttack

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