

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 27628 of 2021

**M/s. Durga Madhab
Enterprises**

.... **Petitioner**

Mr. L. Samantaray, AGA

-versus-

**A.O., Indian Overseas Bank,
Bhubaneswar & others**

.... **Opp. Parties**

Mr. G.D. Kar, Advocate for Bank/O.Ps.1 & 2

Mr. A.K. Jena, Advocate for O.P. No.3/Auction

Purchaser

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M. S. SAHOO

ORDER (Oral)

24.11.2022

Hybrid Mode

Order No.

06. **1.** The petitioner is a proprietorship concern of Manas Ranjan Mahapatra, who is facing recovery process under the SARFAESI Act, 2002 towards the outstanding liabilities in a cash credit facility with the limit of Rs.40 lakhs availed from Indian Overseas Bank, Nayagarh Branch in the year 2016.

2. The petitioner is stated to have filed SA in the month of April/May, 2021 challenging the auction sale along with the sale certificate issued in favour of Ramesh Chandra Samantray (O.P. No.3) being the successful highest bidder in the auction proceeding held on 12.03.2019 towards recovery of the outstanding liabilities. Due to the Debts Recovery Tribunal, Cuttack not being functional as the Presiding Officer was not available, the present writ petition has been filed seeking a similar prayer of setting aside the sale

certificate issued in favour of Ramesh Chandra Samantray/opposite party no.3 as also a direction for an amicable settlement by deposit of the entire outstanding liabilities to save the residential/homestead mortgaged property of the proprietor.

3. During the course of previous hearings, this Court vide different orders directed/permitted the petitioner to deposit the entire sale price paid by the auction purchaser and the outstanding liabilities, if any along with some amount of compensation to be paid to the auction purchaser towards enforcing the right of redemption of the petitioner.

Upon notice, the auction purchaser-O.P. No.3 through his counsel has appeared and states that he is unwilling to settle the dispute by any negotiations.

4. Counsel for the Bank does not dispute the amounts of deposit made by the petitioner-borrower in compliance of the directions passed by this Court to the tune of Rs.45 lakhs which clearly meet the outstanding liabilities of the petitioner due at the time of auction of the property. It is also not in dispute that the sale certificate has not been registered till now and the actual physical possession of the auctioned property is also still with borrower-petitioner.

5. Counsel for the opposite parties have raised serious contest in respect of maintaining a parallel proceeding before this Court in view of the already filed SA and pending adjudication before fully functional DRT, Cuttack. As of now, dispute does not appear to be nearing any end by way of an amicable settlement.

6. Faced with the aforesaid, counsel for the petitioner prays for permission to withdraw the present writ petition in order to enable the petitioner to pursue his remedy before the DRT, Cuttack by either filing another separate SA or by way of amendment of the SA already filed. He prays for direction to the Bank to keep the amounts of deposit made by the petitioner in compliance of the directions of this Court in a interest bearing 'no lien account' to be disbursed on conclusion of the lis between the parties, to which proposal, counsel for the opposite parties have no objection. Prayers are accepted and it is ordered accordingly. It is further clarified that status quo existing as on today shall be maintained till passing of any fresh order by the DRT, Cuttack.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

24th November, 2022
Cuttack