IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28548 of 2020
(Through hybrid mode)

Sukadev Panda .... ***Petitioner***

Mr. A. K. Sahoo, Advocate
Mr. P. K. Mishra, Advocate

-versus-

State of Odisha and others .... ***Opposite Parties***

Mr. T. Sahu, Advocate

Mr. S. K. Mishra, Advocate for O.Ps.2 and 3

Mr. S. K. Mohanty, Advocate
for O.Ps.4 & 5

CORAM: JUSTICE ARINDAM SINHA

ORDER
23.09.2022

Order No.
12.

1. Mr. A. K. Sahoo, learned advocate appears on behalf of petitioner and submits, opposite party bank has been acting unreasonably. Prayer of his client is to direct opposite party to extend One Time Settlement (OTS) facility, regularize the current loan account and not attach the LIC bond assigned against previous loan account. Twelve installments for liquidating the loan have been prayed for.

2. He refers to affidavit dated 27th June, 2022 of the bank to demonstrate that three earlier loan accounts stood closed, respectively on 27th October, 2014, 28th April, 2015 and 5th January, 2016. Subsequent thereto, his client took a term loan for purpose of purchasing photo copier machine. He submits, his client is a practising advocate and that is why necessity of the machine.

3. To purchase the machine his client paid margin money of Rs.1.5 lakhs. His client also furnished liquid security of fixed deposit and recurring deposit account of aggregate of Rs.2,93,248/-. The bank paid directly to the vendor. It then omitted to take insurance on the machine. There was a fire incident in year 2018 and the machine was lost. Now the bank is seeking to obtain maturity value on his client's insurance policy, which, as aforesaid, stood assigned to earlier loan account, already liquidated. In addition the bank has liquidated the other securities and thereafter demanding more. His client has lost the machine, including insured value of it on omission of the bank.

4. Mr. Mohanty, learned advocate appears on behalf of the insurance company and submits, the insurance policy has matured. Aggregate value is Rs.1,99,230/-. The policy, as per his client's record, was assigned to the bank in respect of a loan account. It was not reassigned. No intimation in that regard was made, either by the bank or by petitioner.

5. Mr. Sahu, learned advocate appears on behalf of bank and on query from Court submits, the outstanding loan account no. 407013045000001. He refers to letter of authority dated 5th January, 2016 and submits, thereby there was authorization for his client to recover on the insurance policy. On query from Court he submits, reassignment against the loan account was not made in respect thereof. He then relies on agreement of term loan and hypothecation on 5th January, 2016, clause 7. Petitioner was required to take insurance on the hypothecated machine. The clause provided that it shall be lawfull (but not obligatory) for his client to effect such insurance or to renew or pay such premium and keep the hypothecated machine insured. There was no omission on part of his client in this regard.

6. He submits, the account has outstanding Rs.2,48,257/- as on 7th September, 2022.

7. On query from Court Mr. Sahu has not able to demonstrate that there was requirement made by the bank under clause 7 of the hypothecation agreement, requiring petitioner to insure the machine. It was valuable security by hypothecation, for the bank. There was gross omission on its part to have required insuring it or having insured it on debiting loan account of petitioner. The machine has been lost and there is no compensation by way of insurance, for the loss.

8. The insurance policy does not stand reassigned in respect of the outstanding loan account. Petitioner has authorized the bank to collect on the insurance but in absence of reassignment, the bank must find remedy to be able to collect on it. Furthermore, petitioner may have a claim against the bank for compensation, by insurance lost on the machine by reason of omission to have insured it, being subject matter of the hypothecation agreement. The bank, therefore, for purpose of recovery of Rs.2,48,257/- as on 7th September, 2022 is an unsecured creditor.

9. Above are facts and circumstances to be considered by both petitioner and the bank in negotiating a settlement so that they are able to resolve their disputes. In event dispute on the outstanding amount in the loan account cannot be resolved, both petitioner and the bank have to find their remedy against each other in the Civil Court.

10. On above observations, the writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant