IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30482 of 2021

Subash Seth .... ***Petitioner***

Mr. Amiya Ranjan Sethy, Advocate

-versus-

UCO Bank, Bhubaneswar Regional Office & Another .... ***Opp. Parties***

Mr. B.N. Udgata, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
27.06.2022

Order No.

04. **1.** This matter is taken up through hybrid arrangement (virtual/physical mode).

2. Petitioner is a defaulting borrower of a Term Loan availed for a sum of Rs.3,75,000/- on 7th March, 2009 from UCO Bank, Balikuda Branch, District-Jagatsinghpur for business purposes.

3. The challenge in the present writ petition is to the notice dated 8th September, 2021 issued under Section 13(4) of the SARFAESI Act, 2002 (for short 'the Act, 2002') by the Bank assuming symbolic possession of the secured assets.

4. The ground of challenge is of two-fold:

i) no demand notice was issued under Section 13(2) of the Act, 2002 on 29.02.2016;

ii) that even assuming for the sake of argument that a demand notice under Section 13(2) of the Act, 2002 was issued as alleged on 29th February, 2016, the possession notice dated 8th September, 2021 is liable to be struck down being a stale notice in view of three years having been lapsed.

5. An affidavit dated 27th June, 2022 has been filed by Mr. Bibhuti Bhusan Behera, Branch Manager of the Bank wherein it is stated that due to default in payment of installments, the loan account was classified as NPA on 7th March, 2016 and a demand notice was actually issued on 18th April, 2019 with reference to the outstanding amount as on 29th February, 2016. The postal receipts of the notice served in accordance with law have been annexed to the affidavit. Thus the entire argument sought to be raised based on the date of demand notice dated 29th February, 2016 falls to the ground. We are further of the opinion that hypothetically assuming even if the demand notice was actually dated 29th February, 2016 and the symbolic possession was assumed after delay would not make the possession notice bad in law for not having initiated the recovery process at the earliest in the face of the petitioner having taken no steps to come forward and clear the arrears knowing fully well that he was a defaulter in payment of installments since the year 2016 i.e. the declaration of the account as NPA.

6. At this stage, learned counsel for the petitioner prays for permission to withdraw the writ petition to enable his client to seek his remedy in accordance with law.

7. In view of the above, the Writ Petition is dismissed as withdrawn.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

AKK

27th June, 2022
Cuttack