

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 26213 of 2022

M/s. Sai Marketing & Others

Petitioners

Mr. Durga Prasad Pattnaik, Advocate
with Mr. R. Mahanty, Advocate

-versus-

Collector & Dist. Magistrate,
Ganjam & Others

Opposite Parties

Mr. Sandeep Kumar Mishra,
Advocate on behalf of Mr. Tuna
Sahu, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)
12.10.2022

Order No.

01. This matter is taken up by virtual/physical mode.

1. Petitioner No.1- Sai Marketing, proprietorship concern of Sri N. Rajesh Choudhary (Petitioner No.3) availed a cash credit loan facility from Union Bank of India, Belaguntha Branch, Berhampur in the district of Ganjam for an amount of Rs.20,00,000/- for running the business, whereas the Petitioner No.2-U.Rajarani, wife of the proprietress of the said business concern availed a housing loan facility of Rs.15,00,000/- with repayment schedule fixed for 120 EMIs @ Rs.18,598/- per month. For both the loans, the said property was given as security. Due to financial irregularity in repayment, both the loan accounts were classified as NPA on 31st March, 2021, consequent upon which the notice dated 9th April, 2021 under Section 13(2) of the SARFAESI

Act, 2002 was issued recalling an amount of Rs.22,37,740.43 outstanding as on 31st March, 2021 in respect of cash credit limit of Rs.20,00,000/- and another notice dated 9th April, 2021 was issued recalling an amount of Rs.16,37,286.26 in respect of housing loan.

2. The present writ petition has been filed challenging the order dated 22nd September, 2022 (Annexure-1) passed by the Collector & District Magistrate, Ganjam on an application under Section 14 of the SARFAESI Act, 2002 moved by the Bank/Opposite Party, whereby official assistance has been provided to secure the actual physical possession of the secured asset/residential house on 12th October, 2022.

3. At the outset, counsel for the Bank appearing on advance notice submits that the Petitioner has already been relegated on the previous occasion to challenge the recovery process including the issuance of sale certificate in favour of the auction purchaser, resulting in filing of the Petitioner S.A. No. 80 of 2022 along with amendments now fixed for 14th October, 2022. He further submits that as per the Judgment dated 29th June, 2022 passed by this Court in the case of ***Maa Kalika Bhandar & Others Vrs. The Collector & District Magistrate, Khordha & Others*** in W.P.(C) No. 26500 of 2021, the proper remedy for laying limited challenge to the aforesaid order passed by the District Magistrate is before the DRT.

Counsel for the Petitioners prayed for invoking equitable jurisdiction in the light of the Petitioner has already deposited a sum of Rs.15.00 lakhs today itself with the remaining balance to be deposited within two months.

4. We are afraid that this Court cannot permit the maintenance of parallel proceedings in the case of the Petitioners as they have already filed SA before the DRT. We are equally bound by the judgment of this Court regarding challenge to the order passed by the District Magistrate to be pursued before the DRT. In respect of the equitable ground sought to be invoked, we are afraid that the prayer could not be maintainable as there is no concept of partial redemption. Thus viewed, we are not inclined to exercise jurisdiction under Article 226/227 of the Constitution of India and we relegate the Petitioner to seek his available remedy before the DRT in accordance with law.

5. In view of the above, the writ petition is disposed of.
Ordered accordingly.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge