

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 32305 of 2021

Manzoor Alli

....

Petitioner

Mr. T.K.J. Samanta, Advocate

-versus-

***The Chief Manager cum
Authorised Officer, Union
Bank of India and another***

....

Opp. Parties

Mr. A.K.Mishra-2, Advocate

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO**

ORDER (Oral)

11.02.2022

Order No.

- 2.** **1.** This matter is taken up through Virtual/Physical mode.
- 2.** The petitioner is a borrower of a housing loan (term loan) for a sum of Rs.18,27,000/- sanctioned on 15th October, 2010 by erstwhile Andhra Bank, Duburi Branch. The said loan was to be returned in 192 installments (16 years) with the EMI of Rs.19,394/-. Due to non-payment of the installments, the aforesaid loan account was declared NPA on 31st March, 2021. Demand Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 7th May, 2021, to which objections are stated to have been filed by the petitioner.
- 3.** The present writ petition has been filed challenging the demand notice dated 7th May, 2021.
- 4.** Learned counsel for the Bank submits that the objections filed to the demand notice, have not been considered being beyond the period of fifteen days. He further submits that apart from the aforesaid housing loan

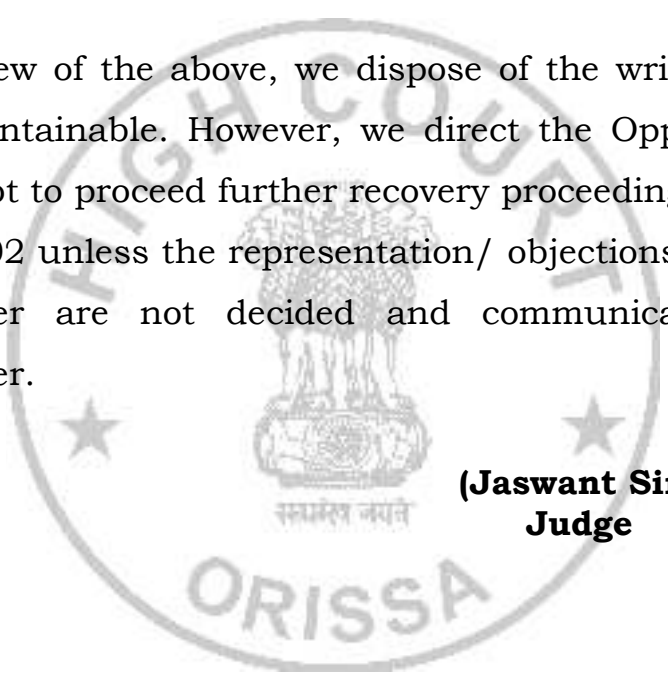
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account, the petitioner had also availed another sum of Rs.8 lakhs vide sanction letter dated 3rd June, 2017 towards the repairing and renovation. The second account was also declared NPA on 31st March, 2021. He further submits that as on today, no further action i.e. taking up of symbolic possession under Section 13(4) has been taken, hence no cause of action has arisen for the petitioner to maintain the present petition.

5. We find the argument raised by the learned counsel for the Bank that the objections filed by the petitioner having received beyond the period of fifteen days of expiry of the sixty days notice issued under Section 13(2) is not liable to be taken up for consideration being beyond the period of fifteen days is totally misplaced. We further find that there is no time limit provided for the borrower to file his objections or representation. However, keeping in view the scheme of the things, the same should be filed at the earliest preferably before the expiry of the sixty days notice lest further action is initiated by the Bank by taking symbolic possession under Section 13 (4). In a situation where no action after the expiry of sixty days is taken, then the objections filed before any such further action, the same is required to be considered and replied to. The provisions of sub-Section 3-A of Section 13 provide that if any objection or any representation is filed by the borrower on receipt of demand notice under Section 13(2), then it is incumbent on the secured creditor (Bank herein) to communicate within fifteen days on receipt of such representation/objection the reasons for non-acceptance of such representation or objections before any further action

for recovery is initiated. In the present case, no decision has been taken on the representation filed by the petitioner to the demand notice. It is also conceded that apart from the issuance of demand notice, no further action has been taken by the Bank i.e. proceeding to assume symbolic possession etc. It is well settled that at this stage, no action accrue to the borrower to either approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, 2002 or to file the writ petition before this Court on equitable grounds.

6. In view of the above, we dispose of the writ petition as not maintainable. However, we direct the Opposite Party-Bank not to proceed further recovery proceedings under the Act, 2002 unless the representation/ objections filed by the petitioner are not decided and communicated to the petitioner.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'समस्त नमो' (Sarvast Namah) below it. The word 'ORISSA' is written in a semi-circle at the bottom. Two stars are positioned on either side of the central emblem. The words 'HIGH COURT' are written in a semi-circle at the top.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

dutta

February 11th, 2022
Cuttack