IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.27665 of 2022

Pradeep Kumar Prusty & Anr	**.. ….**	***Petitioners*** Mr. R.K. Rout, Adv.

-Versus-

Bank of Baroda,Tankapani Road, BBSR & Anr	**……**	***Opp. Parties*** Mr. K.M.H. Niamati, Adv.

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M.S. SAHOO

ORDER

21.10.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. Heard Mr. R.K. Rout, learned counsel appearing for the petitioner and Mr. K.M.H. Niamati, learned counsel appearing for the Opposite Parties.

3. According to the petitioner, he took a home loan from the Opposite Party Bank by virtue of the sanction letter dated 25.09.2018 to the extent of Rs.35 lakhs, payable within 360 months.

4. Each instalment was determined at Rs.27,036.09/- by the bank and the same was agreed to, by the petitioner. The petitioner has admitted that he failed to pay the instalments regularly. That apart, he had taken a cash credit limit of Rs.5 lakhs for carrying on the business of used car and automobiles. It is well reflected in the communication dated 09.11.2018 (Annexure-2 to the writ petition).

5. Since the petitioner did not clear the outstanding, the Opposite Party Bank issued a notice under Section 13 (2) of the SARFAESI Act demanding immediate payment of Rs.41,94,015.57/- which stood as the outstanding on that date. It is apparent that the petitioner could not pay the said amount as per the demand. As a result, the proceeding under Section 13(4) of the SARFAESI Act was initiated.

6. Even the petitioner could not convince the bank that he would liquidate the outstanding. As a result, the bank authority has decided to go for auctioning the property that was secured for purpose of the said loan. The notice for such auction has been published on 23.09.2022 (Annexure-6 to the writ petition) showing the schedule of auction. The auction has been fixed on 26.10.2022 from 02.00 PM to 05.00 PM, based on the valuation report dated 31.08.2022. In the said notice, the reserve price and the EMD have been declared, with description of the land.

7. Mr. Rout, learned counsel has submitted that the petitioner is ready to pay the outstanding falling for non-payment of the instalments from the information, as collected from the Opposite Party Bank, it surfaces that the petitioner had 4 accounts. Out of four, one is a cash credit (CC) account. The petitioner is found liable to pay the upgradation amount of Rs.2,35,742.64/-. Mr. Niamati, learned counsel appearing for the Bank Opposite Parties has categorically submitted that when a CC account is declared NPA it cannot be resurrected by paying the outstanding alone.

8. The petitioner has to discharge the obligation to pay the entire amount and only then the bank may open a new CC account. He has fairly admitted that the process is little longish, cannot be done immediately. However, regarding the other three accounts, as reflected in the said communication (at Page-27 of the writ petition), he has submitted that this upgradation amount may be deposited and those may be regularized. Learned counsel for the Opposite Party has also produced the notice under Sub-Section 2 of Section 13 of the SARFAESI Act, 2002 which was issued to the petitioner on 27.05.2022.

9. We have noted already that the cash credit limit is Rs.5 lakhs. The counsel for the petitioner has submitted that the liability as shown in the notice dated 27.05.2022 to the tune of Rs.41,74,000/- is not acceded to the petitioner.

10. Be that as it may, this writ petition stands disposed of with the following directions:

The petitioner shall deposit an amount of Rs.2,35,742.64/- by 25th October, 2022 without fail and the petitioner shall make due applications to the bank for standardization of the CC account and the appropriate authority in the bank will take needful steps of resurrecting the said account from NPA or opening a new account.

If the amount, as directed by us, is deposited, on or by 25th October, 2022, the Opposite Party-Bank shall not act on their auction notice and they will scrap it forthwith. As the petitioner is given the leeway of standardization for the CC account and also for regularization of the other accounts in the due course, the petitioner shall take steps within a period of 30 (thirty) days.

11. It is needless to say that if the amount, as directed, is not deposited, the bank Opposite Party will be at liberty to proceed with the auction.

12. There shall be no order as to costs.

13. A free copy of this order be supplied to Mr. Niamati, learned counsel for the Opposite Party.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge

Rati Ranjan