IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33612 of 2021

Ranjan Kumar Sahoo .... ***Petitioner***

Mr. Bhabani Sankar Mishra, Advocate

-versus-

Authorised Officer, Canara Bank, Bhubaneswar & Another

.... ***Opp. Parties***

Mr. Bibekananda Udgata, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN

ORDER (Oral)

Order No. **15.03.2022**

03. **1.** This matter is taken up through virtual/physical mode.

2. The petitioner is a defaulting borrower of a Housing loan for a sum of Rs.21,00,000/- availed on 18.08.2015 from Canara Bank, Badambadi Branch, District-Cuttack. The petitioner has also taken another vehicle loan.

3. By filing the present writ petition, challenge has been laid to the sale notice dated 06.08.2021 (Annexure-2 series), whereby the auction sale of the mortgaged-residential house is fixed for 10.09.2021 for recovery of an outstanding liability of Rs.26,41,938/- in both loan accounts.

4. Learned counsel for the parties heard at length and with their able assistance perused the pleadings.

5. The facts in brief are that the petitioner raised a Housing loan of Rs.21,00,000/- on 18.08.2015 from the Opposite Party-Bank. To secure the loan the house to be constructed was offered as a collateral security by way of an equitable mortgage, apart from brother of the petitioner, namely, Manas Kumar Sahoo standing as Guarantor. Due to nonpayment of due installments, the loan was classified as NPA on 18.04.2017. A Demand Notice under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") was issued on 07.07.2018 recalling the outstanding liabilities. A notice under Section 13 (4) of the Act, 2002 was issued on 23.10.2018, whereby symbolic possession of the secured assets was assumed. The physical possession of the secured assets was taken by the Bank on 03.03.2020.

6. The efforts for an amicable settlement also did not materialize due to non-compliance of the directions by the petitioner of the orders passed by this Court on 31.03.2020 in W.P.(C) No.7974 of 2020 filed by the petitioner. After two unsuccessful attempts to sell the mortgaged property, the present e-auction fixed for 10.09.2021 was successful, whereby the property was sold for a sum of Rs.25,87,000/- in favour of the highest bidder Smt. Kuri Sahoo. Upon deposit of the entire sale price, a sale certificate was issued on 01.10.2021 and the physical possession was also handed over on 08.02.2022 to the auction purchaser.

7. It is not in dispute that the petitioner prior to the auction fixed on 10.09.2021 had filed S.A. No.105 of 2021 under Section 17 of the Act, 2002 before the DRT, Cuttack on 08.09.2021 and no interim order was passed in respect of restraining the Bank to proceed with the auction, when the case was initially taken up for hearing on 09.09.2021. It is also not disputed that after adjustment of the sale proceeds, an amount of more than Rs.14,00,000/- is still outstanding as on 15.03.2022 against the petitioner in both the Housing loan and a vehicle loan. It is also not in dispute that the S.A. is pending for disposal before the DRT, Cuttack, which has started functioning upon appointment of the Presiding Officer.

8. In our view, in the facts of the present case, the proper remedy for the petitioner, in light of the law settled by the Hon'ble Supreme Court in ***United Bank of India v. Satyawati Tondon, 2010 (8) SCC 110; Agarwal Tracom Pvt. Ltd. v. Punjab National Bank, 2018 (1) SCC 626*** and ***Authorised Officer, State Bank of Travancore v. Mathew K.C., 2018 (3) SCC 85***, is before the DRT itself by making necessary amendments, if advised, in the already pending S.A. filed by the petitioner.

9. In view of the above, we find no grounds to invoke our writ jurisdiction and accordingly the writ petition is dismissed with liberty to the petitioner to seek his remedy before the DRT.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

March 15th, 2022
Cuttack

AKK