IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29253 of 2022

Kuber Bhutia .... ***Petitioner***

Mr. B.P. Nanda, Advocate

-versus-

Chief Manager-cum-Authorized Officer, UCO Bank, Talcher Township Branch, Angul and Another .... ***Opp. Parties***

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

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
28.11.2022
(Hybrid Mode)

Order No.

03. **1.** The petitioner is a defaulting borrower of a Term Loan of Rs.2.5 lakhs availed on 07.11.2008 from UCO Bank, Talcher Township Branch, Angul/O.P. No.2 for business purpose by mortgaging the immovable property owned by his father- Hari Bhutia (Guarantor). Due to non-deposit of due installments, the loan account was classified as NPA on 31.12.2015 leading to issuance of a demand notice dated 05.08.2016 under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") recalling the entire outstanding liabilities. No objection to the demand notice was filed by the petitioner. The Bank assumed symbolic possession of the mortgaged property on 06.05.2022 by issuance of notice under Section 13(4) of the Act, 2002

2. The petitioner filed W.P.(C) No.14044 of 2022 challenging the aforesaid notice dated 06.05.2022, which was disposed of vide order dated 02.06.2022 with a direction to the petitioner to deposit 25% of the outstanding liabilities within two weeks along with an application for One Time Settlement.

3. It transpires that the Opposite Parties thereafter issued a sale notice dated 26.07.2022 putting the mortgaged property for E-auction sale on 29.08.2022. The property was successfully E-auctioned on the said date with the highest bid of Rs.13,87,000/- offered by one Nityananda Moharana.

4. Thereafter, it emerges that the District Magistrate, Angul passed an order dated 21.09.2022 directing the providing of Official/Police Assistance for taking over actual physical possession of the auctioned property, leading to the Bank issuing a request/notice dated 27.10.2022 (Annexure-3) requesting for vacation of the property within 7 (seven) days of the receipt of this notice.

5. It is the aforesaid notice (Annexure-3) which is under challenge in the present writ petition, with a further direction to the Bank for considering the OTS proposal dated 19.06.2020 (Annexure-4).

6. Learned counsel for the petitioner and the Bank appearing on advance notice have been heard at length.

It is not in dispute that the petitioner did not deposit within the stipulated time 25% of the loan outstanding in terms of the order passed by this Court in W.P.(C) No.14044 of 2022, as is apparent from the OTS proposal (Annexure-4) itself filed by the petitioner wherein it is admitted that the total outstanding dues as on 02.06.2022 were Rs.8,40,654/- and the petitioner was prepared to deposit only a sum of Rs.1.5 lakhs with a request to deposit the remaining within next three months. Thus, for the said Non-compliance, the Bank was free to proceed to auction the mortgaged property towards recovery of the outstanding liabilities. Therefore, there is absolutely no fault with the notice (Annexure-3) and the challenge to the same is rejected. Similarly, the prayer for acceptance of any OTS also is without any merit, moreso upon deposit of the entire sale price of Rs.13,87,000/-, a sale certificate stands issued in favour of the auction purchaser on 10.11.2022.

7. Learned counsel for the Bank states that after adjustment of the outstanding liabilities the surplus amount of Rs.25,907/- is in the process of being refunded to the petitioner.

In the backdrop of the aforesaid facts, we find no grounds to invoke our writ jurisdiction.

8. In view of the above, the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Basudev

28th November, 2022
Cuttack