

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30116 of 2022

Bajaj Finance Ltd., BBSR* *Petitioner

Mr. Ramachandra Panigrahy, Advocate

-versus-

Manju Jajodia & others* *Opp.parties

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

**ORDER (Oral)
14.11.2022**

Order No.

Hybrid Mode

1. 1. The secured creditor (a Non Bank Finance Co.) of a immovable property mortgaged by Sri Pawan Kumar Jajodia/opposite party no.2, who is a defaulting borrower of a loan availed for sum of Rs.2,81,00,000/- in the year 2016, has approached this Court assailing the interim order dated 3rd November,2022 passed by the learned Single Judge of this Court in FAO No.416 of 2022.

2. In brief, it is submitted that at the time of tendering of the loan to opposite party no.2 in the year 2016, the mortgaged property stood under the ownership of opposite party no.2 since last more than ten years. Smt. Manju Jajodia/opposite party no.1, who is none else than the wife of opposite party no.2, to defeat the rightful and lawful claim of the secured creditor had filed a collusive suit challenging the transfer by sale of the said property by her in favour of her husband leading to passing a collusive decree in her favour in

absence of and knowledge of the secured creditor, i.e., the petitioner. After the initiation of recovery process under the SARFAESI Act, 2002 against the defaulting borrower, i.e., the opposite party no.2-husband, the opposite party no.1-wife filed a suit for declaration of injunction and damages on 3rd March, 2022 *qua* the aforesaid mortgaged property forming the subject matter under the SARFAESI Act, 2002. The application under Order-7 Rule-11 of the C.P.C. filed by the petitioner/secured creditor was allowed by the trial court vide order dated 2nd April, 2022 rejecting the plaint. Opposite party no.1-wife then filed a regular First Appeal against the order of rejection of the plaint along with the application under Order 39 Rule-1 & 2 of the C.P.C. before the District Judge, Cuttack (First Appellate Authority). During the pendency of the appeal, an order dated 29th September, 2022 rejecting temporary injunction was passed, which forms the subject matter of FAO No.416 of 2022 preferred before this Court.

3. It is submitted that a Caveat application in accordance with the Rules and Procedure of the Rules of the High Court of Orissa was filed, however, the opposite party no.1 without supplying a copy of the FAO filed before this Court proceeded to address argument before this Court, leading to passing of the impugned interim order dated 3rd November, 2022.

4. After hearing the counsel for the petitioner, we are not satisfied as to how the present writ petition challenging the aforesaid interim order dated 3rd November,2022 passed in FAO No.416 of 2022 would be maintainable or can be entertained, more so, when all the pleas raised herein can very well be pressed before the learned Single Judge at the next date of hearing, i.e., 17th November,2022 and onwards.

5. At this stage, learned counsel for the petitioner prays for permission to withdraw the present writ petition with liberty to raise all the pleas before the learned Single Judge in the pending FAO on 17th November,2022.

6. The writ petition is dismissed as withdrawn with the aforesaid liberty.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

November 14th 2022
Cuttack

Gs/Radha