IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31238 of 2022

Sri Ranjit Kumar Barik .... ***Petitioner***

Mr. D.K. Sahoo, Advocate

-versus-

Chief Manager & Circle SHATRA Head, Authorised Officer, Punjab National Bank, Balasore and another .... ***Opp.parties***

Mr. Anjan Kumar Biswal, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER (Oral)
08.12.2022

Hybrid Mode

Order No.

3. **1**. The petitioner is defaulter-borrower of a cash credit facility availed to the tune of Rs.15.00 lakhs by the end of the year 2017 from the Punjab National Bank, Basipitha Branch, Dist-Mayurbhanj-opposite party no.2. Due to financial indiscipline, the loan account was classified as NPA on 30th December, 2020 leading to issuance of a demand notice dated 23rd August,2021 under Section 13(2) of the SARFAESI Act, 2002 recalling the outstanding liability of Rs.16,33,558.32. The symbolic possession stated to have been assumed on 9th November, 2021 by issuance of demand notice under Section 13(4) of the SARFAESI Act, 2002.

It transpires that vide memo dated 22nd March, 2022 the OTS proposal for a sum of Rs.12.85 lakhs towards clearing the entire outstanding liability was sanctioned, however due to failure of the petitioner to deposit entire amount except a sum of Rs.2,70,000/-

only by the stipulated time of 90 days, the OTS stood cancelled.

2. By filing the present writ petition, challenge *inter alia* has been laid to the sale notice dated 2nd November,2022 fixing the e-auction sale of the mortgaged property offered as a collateral security on 24th November, 2022 for recovery of the outstanding dues of Rs.18,07,393.00 plus further interest and incidental expenses from 1st October,2022.

3. Upon willingness of the petitioner to deposit substantial amount as upfront money and the remaining balance to be cleared within some time, this Court on 23rd November,2022 passed the following order :

> *"1. It is contended that in the sale notice dated 02.11.2022 fixing the auction sale of the mortgaged property on 24.11.2022, incorrect amount of Rs.18,07,393/- is stated to be outstanding, thereby rendering the further process as illegal.*
>
> *Mr. Anjan Kumar Biswal, learned counsel appearing for the Bank concedes that a factual error has been made. He, upon instructions states that factually a sum of Rs.6,45,000/- approximately plus other charges, if any, is due as on today.*
>
> *2. At this stage, learned counsel for the petitioner undertakes to deposit a sum of*

Rs.3 lakhs within next three working days with the remaining balance by 31.12.2022.

3. Issue notice for 29.11.2022.

Mr. Anjan Kumar Biswal, learned counsel for the Bank appears and waives of notice on behalf of the Opposite Parties/Bank. Requisite number of copies of the writ petition be served upon him within three working days.

4. As an interim measure, subject to the petitioner depositing a sum of Rs.3 lakhs on or before 28.11.2022, the successful bid, if any, shall not be confirmed without the leave of the Court."

4. On the next date of hearing i.e. on 29th November,2022, the following order was passed:

"1. Counsel for the Bank submits that after deposit of a sum of Rs.3 lakhs pursuant to the previous orders, the remaining balance is Rs.1,95,000/-, which would then close the loan account.

List on 08.12.2022.

2. The petitioner is directed to deposit the aforesaid amount for the closure of the loan account."

5. At the time of hearing today, learned counsel for the Bank concedes that the required amounts in terms of both the aforesaid orders stand duly deposited by the petitioner. He, however states that the Bank is demanding another sum of Rs.9,000/- towards the interest component, however, is unable to show the basis of claiming of such amount.

We find the stand of the Bank in now claiming another Rs.9,000/- to be totally unfair and uncalled for and hence the plea for directing the deposit of another Rs.9,000/- is rejected.

In view of the aforesaid conceded fact that the entire outstanding liability stands deposited, we dispose of the writ petition as infructuous with the further direction to the Bank to release the title deeds of the mortgaged property within next three weeks from today, in case the same is not mortgaged in some other loan accounts.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

8th December, 2022
Cuttack

Gs/Radha