

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37195 of 2021

Smt. Banita Swain @ Pattnaik ***Petitioner***

Mr. M.R. Khatua, Advocate

-versus-

The Authorised Officer, Indian ***Opp. Parties***

Overseas Bank, Regional Officer,

Law Department, Bhubaneswar

and others

Mr. G.D. Kar,
Advocate for the Bank

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER (Oral)

18.04.2022

Order No.

03.

1. This matter is taken up through virtual/physical mode.
2. The guarantor/mortgager of the collateral security, is before this Court assailing the order dated 11th October, 2021 passed by the Collector & District Magistrate, Nayagarh on the application under Section 14 of the SARFAESI Act, 2002 (for short, 'Act, 2002') filed by the Bank/secured creditor, whereby the providing of official/police assistance for taking over the actual physical possession of the secured asset has been ordered.
3. Counsel for the Petitioner submits that S.A. No.34 of 2020 filed by the Petitioner before the DRT, Cuttack under Section 17(1) of Act, 2002 for challenging the sale deed dated 17th June, 2019 executed in favour of the auction purchaser-Snehalata Sahoo by the Bank/secured creditor was allowed vide order dated 29th September, 2020, whereby while setting aside the auction sale held on 12th March, 2019, the

consequent sale certificate issued in favour of the auction purchaser was set aside with the direction to the Petitioner herein to deposit a sum of Rs.39, 30, 000/- on or before 31st December, 2020. He further submits that the Bank has gone before the Debt Recovery Appellate Tribunal, Kolkata, wherein the interim order of stay of the order passed by the DRT, Cuttack was operational till 14th January, 2021. He submits that in the aforesaid facts, providing of official assistance to take over the actual physical possession is unwarranted. On the other hand, counsel for the Bank states that the Petitioner herein has not deposited any amount much less by the stipulated time in terms of the compliance of the order dated 29th September, 2020 passed by the DRT, Cuttack. He further states that the interim order staying the operation of the order dated 29th September, 2020 passed by the DRT, Cuttack has not been vacated or modified till today, and that apart, he has referred to an order dated 31st March, 2021 (Annexure-3 available at Page-23), whereby the Appellate Tribunal has specifically called upon the bank to perform its duty of handing over actual physical possession, obviously by invoking the remedy under Section 14 of Act, 2002. He, thus, submits that the Petitioner is not entitled to any discretion in relief under Article 226 of the Constitution of India.

4. After hearing counsel for the Petitioner and without going into the rival arguments, we are of the view that the proper remedy for the Petitioner to assail the aforesaid order dated 11th October, 2021 is to file an application under Section 17 of Act, 2002 before the DRT of the competent jurisdiction in view of the settled law, including the judgment

of the Division Bench of this Court dated 10th January, 2022 rendered in W.P.(C) No.11425 of 2021 (***Bajaj Finance Ltd. – v- M/s. Ali Agency and others***).

5. In view of the above, the present writ petition is dismissed with liberty to the Petitioner to seek her remedy before the DRT, Cuttack.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Jyostna

April 18th, 2022
Cuttack

