

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.32309 of 2022

Alekh Das

....

Petitioner

Mr. Dayanidhi Mohanty, Advocate

-versus-

**Collector-cum-District
Magistrate, Nayagarh &
others**

....

Opp.parties

Mr. S.K.Dey, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S.SAHOO

ORDER (Oral)
30.11.2022

Hybrid Mode

Order No.

1 **1.** Petitioner is a defaulting borrower of five loans, availed in the year 2019 from the Indian Bank, Khandapada Branch, Nayagarh, which were classified as NPA on 24th October, 2021 due to financial indiscipline. The Bank issued a demand notice dated 1st November, 2021 (Annexure-1) to the petitioner and his wife, who is a guarantor with mortgage of immovable property owned by her, recalling the aggregate outstanding liability of Rs.27,54,907.72 due as on 31st October, 2021 along with future interest and incidental charges. The symbolic possession of the mortgaged property offered as a collateral security was assumed on 16th February, 2022 by issuance of notice (Annexure-2) under Section 13(4) of the SARFAESI Act, 2002.

2. The present writ petition has been filed with the prayer for setting aside the e-auction sale notice dated 10th November, 2022 (Annexure-4) fixing the auction sale of the mortgaged property on 28th November, 2022; as also an order dated 18th October, 2022 (Annexure-3) passed by the Collector-cum-District Magistrate, Nayagarh directing to provide the official assistance for taking over the actual physical possession of the mortgaged property by the Authorised Officer on an

application under Section 14 of the SARFAESI Act moved by the Bank.

3. Heard learned counsel for the petitioner.

4. At the outset, Mr. S.K.Dey, learned counsel appearing for the Bank on advance notice points out that the auction fixed for 28th November, 2022 has failed for want of any intending bidders and further submits that the petitioner has already approached the DRT by filing securitization application, and that apart the proper forum for laying the challenge to the order dated 18th October, 2022 passed by the Collector-cum-District Magistrate, Nayagarh, is the DRT, Cuttack in view of the principle of law laid down in ***Bajaj Finance Limited v. M/s. Ali Agency and others*** passed in W.P.(C) No.11425 of 2021 decided on 10.01.2022. It is thus submitted that the present writ petition qua the other reliefs is to be dismissed.

5. In view of the above contentions of the Bank, we find no grounds to invoke our writ jurisdiction.

The writ petition is accordingly dismissed, with liberty to the petitioner to pursue his available remedies before the DRT.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

November 30th 2022
Cuttack

Gs/Radha