IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 38475 of 2021

M/s. Hindustan Agencies ... ***Petitioner***

Mr. B.N. Mohapatra, Advocate

-versus-

Chairman, Debts Recovery Appellate Tribunal, Kolkata and others ***Opposite Parties***

Mr. K.M.H. Niamati, Advocate for Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (ORAL)

Order No. **14.03.2022**

04. **1.** This matter is taken up by virtual/physical mode.

2. In the writ petition it is fervently prayed for invocation of extraordinary jurisdiction under Article 227 to issue writ of *mandamus* vested under Article 226 of the Constitution of India to the Chairman, Debts Recovery Appellate Tribunal, Kolkata, 9, Old Post Office Street, 7th Floor, Kolkata – 700001-opposite party No.1 requesting it to dispose of the Appeal bearing No.26/2020 filed at the behest of the petitioner-auction purchaser pending before it. The petitioner has made following prayer in the writ petition:-

> *"It is therefore prayed that this Hon'ble Court may be pleased to admit the writ application and give a direction to the Debt Recovery Appellate Tribunal Kolkata (opposite party No.1) may disposed up the Appeal No.26/2020 within a stipulated period, more specifically within a period of one month from the date of receipt of order for ends of justice."*

P.T.O.

3. It is the considered opinion of this Court that such a prayer at the behest of the auction-purchaser is unwholesome.

4. As the facts unfurled in the writ petition by the petitioner, M/s. Hindustan Agencies, partnership firm represented by its Managing Partner Sri Vikash Kumar @ Vikash Kumar Bhoot, would show that Securitization Application bearing SA No.37/2018 was filed by the defaulting borrower, namely Sri Taraknath Das, son of Dinesh Chandra Das, Bahalda Road, Tiring P.S. in the district of Mayurbhanj-opposite party No.2 before the Debts Recovery Tribunal, Cuttack under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter be referred to as "SARFAESI Act" for brevity). The relief claimed therein has been recorded by the Debts Recovery Tribunal, Cuttack *vide* Order dated 29.02.2020 in said Securitization Application as follows:-

> *"This SA is filed by the applicant under Section 17 of SARFAESI Act with a prayer that notice issued by the respondent-Bank under Section 13(4) of the SARFAESI Act dated 13.01.2017 for the properties mortgaged is without compliance of the minimum formalities and not considering the representation and part payment made to that effect in the reply to the Section 13(2) notice under SARFAESI Act and be quashed and such actions are violation of natural justice and illegal as well as bad in law etc."*

4.1. It is the case of the Bank of Baroda, Boring Canal Road, Patna before the Debts Recovery Tribunal at Cuttack that after the e-auction sale being concluded the borrower-opposite party No.2 could not maintain the Securitization Application by amending it to question the correctness of valuation of mortgaged property auctioned; moreso, when physical possession has been handed over after sale deed having been executed in favour of the auction purchaser.

4.2. As is apparent from the Order dated 29.02.2020 of the Debts Recovery Tribunal at Cuttack passed in SA No.37 of 2018 *vide* Annexure-1 that entire dispute boiled down to the aspect for consideration is whether the auction sale by the Bank to the petitioner at Rs.3,35,31,000/- could be confirmed whereas one Ashok Kumar Agarwal who had offered more than Rs.5,00,00,000/- and ready to purchase the property at Rs.4,00,00,000/-. The Debts Recovery Tribunal having regard to facts, made the following observation:-

> *"12. Therefore, in view of Article 300A of the Constitution of India, it is clear that no person shall be deprived of his own property and the Tribunal, after considering the facts and circumstances of the case and upon submissions of applicant and respondents, this Tribunal to deposit the balance amount of Rs.2 crores before the respondent-bank and the applicant is directed to take steps to deposit Rs.2 crores from Ashok Kumar Agarwal, who is interested to purchase the property and the respondent-bank and auction purchaser are directed to take steps to register the property in favour of Mr. Ashok Kumar Agarwal after Rs.2 crores deposited within 1 month. In case applicant and Sri Mr. Ashok Kumar Agarwal failed to pay Rs.2 crores, the auction purchaser-R4 is at liberty to deal with the property which is purchased through auction after one month. The applicant along with Mr. Ashok Kumar Agarwal are at liberty to deposit Rs.2 crore within one month and*

the respondent-bank is directed to return the amount of Rs.3,35,31,000/- with fixed deposit rate of interest from the date of deposit till payment is made and all the expenses for registering the sale deed and further costs are directed to debit from the account of the applicant and pay the same to the auction purchaser (i.e., R4) after one month from the date of this order. In case the applicant deposits the amount the proceedings are hereby set aside on the ground that the high value property is sold for lesser price and notices which are issued under Section 13(2) are not proper and subsequent notices are also followed the Section 13(2) notices.

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14. *Under these circumstances and as stated supra, in order to give an opportunity to the applicant to discharge the loan liability, granted one month time to applicant to deposit the balance amount of Rs.2 crores before the respondent-bank and the applicant is directed to take steps to deposit Rs.2 crores and the respondent-bank and auction purchaser are directed to take steps to register the property in favour of Mr. Ashok Kumar Agarwal or in favour of applicant after deposit o Rs.2 crores within 1 month. In case applicant failed to pay Rs.2 crores, the auction purchaser-R4 is at liberty to deal with the property which is purchased through auction after one month from the date of this order. The applicant deposits Rs.2 crore within one month the respondent bank is directed to return the amount of Rs.3,35,31,000/- with fixed deposit rate of interest from the date of deposit till payment is made and all the expenses for registering the sale deed and further costs are directed to debit from the account of the applicant and pay the same to the auction purchaser after one month from the date of this order.*

> *In case the applicant deposits the amount of Rs.2,00,00,000/- (Rupees two crores only) the proceedings are hereby set aside on the ground that the high value property is sold for lesser price and notice under Section 13(2) also not a valid notice. Here is no any document is filed to show that notice under Section 13(2) was served to guarantor who mortgaged the property in favour of bank.*
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> *With these observations this SA 37/2018 is disposed. ***"*

4.3. The petitioner being aggrieved by the Order 29.02.2020 of the Debts Recovery Tribunal, Cuttack filed Appeal bearing No.26/2020 before the Debts Recovery Appellate Tribunal, Kolkata.

4.4. Perusal of Orders dated 10.12.2020 and 17.12.2020 *vide* Annexures-2 and 3 respectively, it is revealed that the learned Appellate Tribunal has granted stay of operation of Order of the learned Debts Recovery Tribunal, Cuttack.

5. The petitioner contends that though it filed a petition before the Debts Recovery Appellate Tribunal, Kolkata praying for early hearing of the matter citing that having purchased the property in auction, it is unable to utilize the same and it suffers loss day by day.

6. Since the petition is not given attention to by the learned Debts Recovery Appellate Tribunal, it is submitted by the counsel for the petitioner that with constraint it approached this Court invoking Article 227 of the Constitution of India for a direction to said Tribunal to dispose of Appeal bearing No.26/2020 within a stipulated period.

7. While *moto* of the statute is to bring about expeditious disposal of recovery applications, which is underlying intention of expediting recovery of public money. It is also aimed at to curb misuse of public money by borrowers. It is beyond comprehension to prolong hearings by granting adjournments. Counsel for the petitioner attempted to demonstrate that the matter before the Appellate Tribunal got adjourned and thereby huge amount of money of his client-auction purchaser got locked up.

8. Clause (2) of Article 226 read with Article 227 of the Constitution of India indicates that the High Court exercises its discretionary jurisdiction over the orders passed by the subordinate courts within its territorial jurisdiction. Even if any part of the cause of action has arisen within its territory that would confer jurisdiction, but this principle cannot be applied when the High Court exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State *[Ambica Industries Vrs. Commissioner of Central Excise, (2007) 6 SCC 769]*. When the High Court exercises its jurisdiction over a Tribunal extending its jurisdiction over more than one State, then the High Court in the State where the first court is located should be the proper forum. In the present case, the first or the primary forum is the Debts Recovery Tribunal, Cuttack. Therefore, this Court has the jurisdiction to exercise its supervisory jurisdiction over the Debts Recovery Appellate Tribunal, Kolkata.

9. Though this Court has the supervisory jurisdiction over the Debts Recovery Appellate Tribunal, Kolkata to issue writ, the petitioner's prayer to issue *mandamus* to the Appellate Tribunal to dispose of the appeal early may not be apt. This Court is not oblivious of the fact of pandemic situation that prevailed in entire world during the last two years and normalcy has not yet been achieved in all walks of life including the Courts and Tribunals. Therefore, to set impracticable period for hearing and disposal of appeal would be inappropriate and onerous.

10. In the above circumstances, taking into consideration that the auction purchaser has already parted with huge of amount of money, the writ petition is disposed of with a request to the Debts Recovery Appellate Tribunal, Kolkata to look into the feasibility of early disposal of Appeal bearing No.26/2020. The petitioner is at liberty to move fresh petition before said Appellate Tribunal.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant March 14, 2022
Cuttack