

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C)No.39125 of 2021**

***Pravesh Pandey***

.... ***Petitioner***  
Sk. Zafarulla, Advocate

-versus-

***Chief Manager-cum-Authorized  
Officer, State Bank of India,  
Bhubaneswar and Others***

.... ***Opposite Parties***

Mr. G.D. Kar, Advocate for the SBI-O. P. No.1  
Mr. N.K. Dash, Advocate for the ICICI Bank-O. P. No.2  
None for O.P. No.3  
Mr. P. Anup Dash, Advocate for O.P. Nos.4 and 5

**CORAM:**

**JUSTICE JASWANT SINGH  
JUSTICE M.S. RAMAN**

**ORDER (Oral)**

**22.08.2022**

**Order No.**

02.

1. This matter is taken up through virtual/physical mode.
2. It transpires, as stated by counsel for Opposite Party Nos.4 and 5, that the Flat in question was sold by the builder to Opposite Party Nos.4 and 5 in the year 2012, which was offered as a collateral security against a loan availed by O.P. No.4 from ICICI Bank with equitable mortgage of the Flat. The developer is stated to have fraudulently resold the same Flat to Prayas Kanti Samal-Opposite Party No.3, which was also offered as a collateral security against a loan availed by said O.P. No.3 from State Bank of India with equitable mortgage of the same Flat.
3. The Petitioner is auction purchaser in the auction conducted by the State Bank of India in the NPA loan account of Prayas Kanti Samal-Opposite Party No.3. It is stated that a

sale certificate with physical possession was issued in favour of the Petitioner on 17<sup>th</sup> December, 2018.

4. By filing the present writ petition, the auction purchaser has assailed the action of the ICICI Bank-Opposite Party No.2 in proceeding to assume symbolic possession of the Flat in question by issuance of a notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act, 2002') qua the NPA account of O.P. No.4 with the ICICI Bank.

5. This Court on 16<sup>th</sup> December, 2021 passed the following order:

- “1. This matter is taken up through hybrid mode.*
- 2. The auction purchaser is before this Court with the grievance that the property purchased by him in an auction conducted by the secured creditor i.e. SBI and sale certificate issued with possession on 17th December, 2018, the O.P. No.2 i.e. ICICI Bank Ltd., has taken steps to assume symbolic possession, qua stranger-defaulting borrower, who has no connection with the said property.*
- 3. Issue notice for 03.02.2022.*
- 4. On the asking of the Court, Mr. G.D. Kar, counsel appears and waives notice on behalf of O.P. No.1/SBI, whereas Mr. N.K.Dash, counsel appears and waives of notice on behalf of O.P.No.2. Let requisite number of copies of the paper book be furnished to both the counsel during course of the day.*
- 5. Let notice be served to O.P. Nos. 3 to 5 through Speed Post with A.D. Postal requisites shall be filed within three days.*
- 6. In the meanwhile, status quo regarding possession shall be maintained by the parties till the next date of hearing.*
- 7. Urgent certified copy of this order be granted on proper application.”*

6. At the time of resumed hearing today, counsel for the Petitioner upon instruction states that the builder has already settled the issue with the ICICI Bank and therefore, a withdrawal memo dated 16<sup>th</sup> August, 2022 (at Flag-X) has

been filed seeking an unconditional withdrawal of the writ petition.

7. In view of the above, the writ petition is dismissed as withdrawn.

***(Jaswant Singh)***  
***Judge***

***(M.S. Raman)***  
***Judge***

*Jyostna* August 22<sup>nd</sup>, 2022  
Cuttack

