IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33468 of 2022

Mamata Rath and Another .... ***Petitioners***

Mr. Lingaraj Mohanty, Advocate
with Mr. Tathagat Sahoo, Advocate

-versus-

The Authorised Officer, Bank of Baroda, Regional Stressed Asset Recovery Branch, Bhubaneswar and Another .... ***Opp. Parties***

Mr. K.M.H. Niamati, Advocate for the Caveator

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
08.12.2022
(Hybrid Mode)

Order No.

01. **1.** This Writ Petition has been preferred by the petitioners i.e. Mamata Rath and Radha Mohan Rath to set aside the E-auction Sale notice dated 23.11.2022 and also to direct the O.P. Nos.1 & 2/ Bank of Baroda to settle the loan account on One Time Settlement (OTS) basis.

2. The brief facts of the case are that the Petitioner no. 1 is proprietor of M/s. Akhandalmani Distributors and availed a Cash Credit Loan to a limit of Rs.80 lakhs on 23.11.2010 to run her business. Further, both the Petitioners availed a Housing Term Loan of Rs.45 lakhs on 06.07.2009 with a condition to repay the Housing loan in 180 equal monthly installments commencing from 07.02.2011. Further, three plots/residential properties i.e. Plot No. 3790/8096, 3787/7588 & 3790/ 7587, Mouza-Bhubaneshwar, Sahar unit-38, Pandra recorded in the name of both the petitioners were mortgaged to secure the two above mentioned loans.

3. Due to financial indiscipline, the loan accounts of the petitioners were declared as NPA on 31.08.2015. Further, a demand notice under section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") was issued to the petitioners on 11.09.2015 demanding an aggregate amount of Rs.97,16,766/- due as on 31.08.2015. A possession notice dated 21.12.2015 was issued under Section 13(4) of the Act, 2002 taking symbolic possession of the property. However, it is the claim of the petitioners that they never received the notice under Section 13(2) and subsequent possession notice under Section 13(4) of the Act, 2002 and directly received a notice for taking actual physical possession under Section 14 of the Act, 2002. The petitioners also claim that they have requested the Opposite Party/Bank to settle the loan account on OTS basis, however, the Banks have refused.

4. It is pertinent to note that the petitioners approached the DRT vide S.A. No.15/2018 seeking restoration of the physical possession and also quashing of the possession notice. The learned DRT vide order dated 19.06.2019 directed the applicant/petitioner-herein to deposit Rs.50.00 lakhs in two installment of Rs.30.00 lakhs as 1st Installment & Rs.20.00 lakhs as 2nd Installment. The *modus operandi* was that after deposit of Rs.30.00 lakhs on or before 21.06.2019 the OP/ Bank will redeliver the physical possession of Plot No.3790/8096 within 48 hours and after deposit of Rs.20.00 lakhs on or before 03.07.2019 the possession of rest of the immovable properties i.e. Plot No.3790/7587 & Plot No. 3787/7588 will also be redelivered within 48 hours.

5. The petitioner was able to deposit Rs.30 lakhs in due period, however, failed to deposit the 2nd Installment and consequently, the petitioner filed a time petition before the DRT seeking some more time to pay the 2nd Installment. The learned DRT vide order dated 21.01.2020 extended the time limit to deposit the 2nd Installment to 29.01.2020 and also observed that in case the applicant/petitioner herein fails to comply the conditions laid down in order dated 19.06.2019, the Bank is at liberty to take steps for recovery of their dues as per law. The relevant portion is reproduced below:-

> *"Call on 29.01.2020. In case the applicant failed to comply the conditions, Respondent/Bank is at liberty to take steps for recovery of their dues as per law."*

It transpires that the petitioner still failed to deposit the required amount within the extended time.

6. The petitioners vide their offer letter dated 23.09.2022 offered a sum of Rs.1 crore towards compromise settlement for the entire outstanding liabilities. The same was considered and found unacceptable by the Bank as per the guidelines of the Bank as a sum of Rs.1 crore against the total dues of Rs.3,88,34,934.79 plus all costs and charges was found to be quite meagre. Accordingly, vide Memo dated 14.11.2022 the rejection of the offer for the OTS compromise settlement in respect of both the accounts was communicated to the Petitioners.

7. In the meantime, no progress was made in the case bearing S.A. No.15/2018 due to Corona and other factors. The Opposite Party/Bank vide a Sale notice dated 23.11.2022 fixed the date of auction of all the immovable mortgaged properties on 09.12.2022 for recovery of outstanding amounts.

8. It is also relevant to note that the Opposite Party/Bank had filed two O.A. applications numbered O.A./617/2022 & O.A/615/2022 in respect of two loan accounts for recovery of Debts under section 19(4) of DRT (Procedure) Rules, 1993 and the next date is fixed on 28.12.2022 & 14.12.2022 respectively.

9. Heard the Learned Counsel for the Parties at length.

10. The prayer of the petitioners to quash the E-auction sale notice dated 23.11.2022 cannot be accepted as there is no basis much less any legal basis laid down in the pleadings to maintain a challenge to the sale notice. The petitioners also do not appear or have the capacity to pay a substantial amount as upfront money with an undertaking to clear the remaining balance within some reasonable amount of time as would be reflected from their previous conduct before the DRT, where they failed to pay an installment of Rs.20 lakhs even within the extended time. Be that as it may, the petitioner has already approached the DRT challenging the recovery process under the SARFAESI Act, 2002 and therefore the instant issue can also be raised before the same forum either in the pending S.A. or by filing a fresh one, if so advised.

11. The other prayer of the petitioners-herein to direct the O.P. Nos.1 & 2/ Bank of Baroda to settle the loan account on One Time Settlement (OTS) basis cannot be allowed on the basis of the decision of the Apex Court in ***Bijnor Urban Co-opearative bank Limited, Bijnor and others v. Meenal Agarwal and others (AIR 2022 SC 56).***

12. In view of the above observations, the Writ Petiton is dismissed with liberty to the petitioners to raise their grievances before the DRT in accordance with law.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

Basudev

8th December, 2022
Cuttack