IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 40761 of 2021

Hemangini Das .... ***Petitioner***

Mr. G.P. Jena, Advocate

-versus-

Branch Manager, Bank of Baroda, Mahatab Road, Cuttack and another .... ***Opp. Parties***

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

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN

ORDER (Oral)

Order No.	**16.03.2022**
04.	**1.** This matter is taken up through virtual/physical mode.

2. The petitioner is the proprietor of M/s. P.K. Pharmaceuticals, which is a defaulting borrower in four loan accounts, which had been declared NPA on 28th September, 2021. Recovery process under the SARFAESI Act, 2002 was initiated by demand notice dated 29th September, 2021 under Section 13(2) of the SARFAESI Act, 2002 (for short "the Act, 2002") recalling the total outstanding liability of Rs.2,19,94,448/- in the aforesaid accounts. Symbolic possession was assumed vide notice dated 07th December, 2021 issued under Section 13(4) of the Act, 2002. The auction for sale of the mortgaged property was fixed for 14th March, 2022 vide sale notice dated 4th February, 2022.

3. By filing the present writ petition prayer is for quashing the demand notice issued under Section 13(2) of the Act, 2002 and further direction for settling the Cash Credit loan account for a sum of Rs.1 crore under the OTS Scheme.

4. Learned counsel for the Bank upon advance notice submits that on both counts the writ petition is not maintainable. It is well settled that a demand notice issued under Section 13(2) of the Act, 2002 is not amenable to challenge even before the DRT much less in writ jurisdiction. It is well settled that no direction can be issued to the Bank by the Court for settlement of a loan account under the OTS Scheme, which is the exclusive domain of the Bank unless their action is arbitrary. To that effect, learned counsel for the Bank cites a recent judgment of the Hon'ble Supreme Court in the case of ***The Bijnor Urban Cooperative Bank Limited, Bijnor & others Vs. Meenal Agarwal & others,*** reported in ***AIR 2022 SC 56.***

5. Faced with the aforesaid situation, learned counsel for the petitioner prays for permission to withdraw the writ petition to enable his client to invoke the special scheme floated by the Bank which is non-discriminatory and non-discretionary, as also approach the Bank for selling of portion of the mortgaged property by way of private treaty.

6. Learned counsel for the Bank states that the Bank has no objection to such a recourse subject to the satisfaction of the Bank as per the policies/rules and regulations.

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

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

March 16th, 2022
Cuttack

AKK