IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P (C) No. 41314 of 2021

T. Rasmita Patro .... ***Petitioner***
None

-versus-

Authorized Officer and Chief Manager, Union Bank of India, Regional Office, Berhempur and Another .... ***Opposite Parties***

Mr. S.K. Ghose, Advocate
(for Bank)

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

<u>ORDER(Oral)</u>

<u>Order No.</u> **23.03.2022**

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

2. With a prayer to quash possession notice dated 14th December, 2021 U/s 13(4) of the SARFAESI Act, 2002 vide Annexure-1, the Petitioner-widow/L.R. of the borrower has approached to this Court.

3. The husband of the Petitioner, namely, T. Panchanan Patro availed loan from Bellaguntha Branch of Union Bank of India, Ganjam for running business in the name Hari Omm Agency. He also availed cash credit loan of Rs. 5.00 lakhs initially which was enhanced to Rs.10.00 lakhs and thereafter to Rs.23.00 lakhs. He had also availed Covid Loan (term loan) of Rs.2.00 lakhs on 24th June, 2020. Both the above accounts were declared as NPA on 16th July, 2021. The Opposite Parties-Bank issued demand notice U/s 13(2) of the SARFAESI Act, 2002 on 1st September, 2021 recalling an amount of Rs.24,97,851.46. Subsequently notice U/s 13(4) was issued on 14th December, 2021 on which date symbolic possession was taken.

4. Upon willingness of the Petitioner to clear the outstanding liability, this Court while issuing notice of motion passed the following order on 31st January, 2022.

> "Learned counsel for the Petitioner states that in order to demonstrate her bona fides, the Petitioner is prepared to deposit a sum of Rs. 8 lakhs before the next date with the Opposite Party-Bank.
>
> It is accordingly directed that if the above deposit is made on or before 15th February, 2022, the auction fixed on 17th February, 2022 will not proceed.
>
> To ensure compliance of the above assurance, list before the roster Bench on 16th February, 2022."

5. Further order has been passed on 16th February, 2022:-

> "Mr. S.P. Das, Proxy Counsel appearing on behalf of Mr. S.K. Mahanty, learned counsel for the Petitioner prays for an adjournment due to non-availability of the arguing counsel.

> Mr. Ghose, learned counsel for the Bank concedes that a sum of Rs.8.00 lakhs stands deposited. He, however, prays for supply of copy of the writ petition.
>
> List on 9th March, 2022 for further consideration.
>
> Let a copy of the writ petition be supplied to Mr. S.K. Ghose, learned counsel for the Bank.
>
> The Petitioner is also directed to file her undertaking in respect of the schedule of payment of the remaining balance within next three months."

6. The matter got listed on 9th March, 2022 and 22nd March, 2022 on which dates the counsel for the Petitioner sought for adjournment.

7. None appears for the Petitioner at the time of call today.

8. Mr. S.K. Ghose, counsel for the Opposite Parties-Bank submitted that the Petitioner having complied with the direction to deposit Rs.8.00 lakhs vide order dated 31st January, 2022, thereafter has not deposited any amount nor filed his undertaking in spite of one month out of three months prayed for having lapsed. He also submitted that since this Court vide order dated 31st January, 2022 has directed not to proceed with auction fixed on 17th February, 2022 in the event of Petitioner depositing a sum of Rs.8.00 lakhs. The Bank, therefore, did not proceed any further.

9. Mr. Ghose further submitted that as on 28th February, 2022, the outstanding amount in respect of both the loan accounts stands at

Rs.21,71,000/-. It is well settled that one who seeks equity he must do equity. The manner in which the counsel for the Petitioner sought for adjournment on earlier occasions and remained absent today which speaks for itself that the Petitioner is not in a mood to discharge its liability. Therefore, the exercise of writ jurisdiction by this Court is unwarranted.

10. Hence, the writ petition is dismissed for non-prosecution.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

March 23rd , 2022
Cuttack