IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31470 of 2024

Kurupasindhu Pradhan ..... **Petitioner**

Mr. C. Bidyabhushan, Advocate

-versus-

Repco Home Finance Ltd. (RHFL), Bhubaneswar ..... ***Opposite Party***

CORAM:
THE HON'BLE MR. JUSTICE S.K. SAHOO

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

ORDER
16.12.2024

Order No.

01. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

Heard learned counsel for the petitioner.

This writ petition has been filed by the petitioner with a prayer to direct the opposite party to provide the petitioner with the benefit of One Time Settlement, so as to enable the petitioner to settle the pending dues and redeem the mortgaged property.

It appears that e-auction sale notice under the SARFAESI Act has been issued on 15.11.2024. In the case of **United Bank of India -Vrs.- Satyawati Tondon and others reported in (2010) 8 Supreme Court Cases 110**, it has been held that if any one has any tangible grievance against the notice 13(4), he can avail remedy

by filing an application under section 17(1). The Tribunal is empowered to pass interim order under section 17 and is required to decide the matter within a fixed time schedule which is both expeditious and effective.

Recently, the Hon'ble Supreme Court in the case of **M/s. South Indian Bank Ltd. & Ors. -Vrs.- Naveen Mathew Philip & Anr. reported in 2023 LiveLaw (SC) 320** has deprecated the interference of the High Courts in matters pertaining to the SARFAESI Act, where efficacious alternative remedy has been prescribed in the statute itself. The Hon'ble Court went on to hold as follows:

> "16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the non-compliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative."

In view of the settled position of law as held hereinabove so also in the case of **Hemraj Ratnakar Salian -Vrs.- HDFC Bank Ltd. & Ors. Reported in (2021) 20 Supreme Court Cases 395** and **Kanaiyalal**

Lalchand Sachdev & Ors. -Vrs.- State of Maharashtra & Ors. reported in (2011) 2 Supreme Court Cases 782, since alternative and efficacious remedy is available to the petitioner, we are not inclined to entertain this writ petition. However, we grant liberty to the petitioner to approach the DRT by filing an appeal. If such an appeal is filed, the same shall be considered in accordance with law. It is made clear that we have not expressed any opinion on the merits of the case.

Pending applications, if any, shall stand disposed of.

Urgent certified copy of this order be granted on proper application.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

RKM

Signature Not Verified
Digitally Signed
Signed by: RABINDRA KUMAR MISHRA
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 17-Dec-2024 17:53:33