

(2016) 05 OHC CK 0026

In the Orissa High Court

Case No : Writ Petition (Civil) No. 7146 of 2016

Agasti Behera

APPELLANT

Vs

Authorised Officer, ICICI Bank

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)

Citation : (2016) 1 ILRCuttack 1068

Hon'ble Judges : Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : Mr. Debendra Ku. Sahu & B.K. Behera, Advocate, for the Petitioners; Mr. Deepak Kumar, Advocate, for the Opp. Parties

Final Decision : Allowed

Judgement

Vineet Saran, C.J.—Petitioner had taken a housing loan from the opposite party-Bank in the year 2006. Since there was default in payment of the regular instalments, the account of the petitioner was declared as NPA, and proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were initiated against the petitioner. On 30.6.2011, notice under Section 13(2) of the SARFAESI Act was issued demanding a sum of Rs. 11,70,492.00. Thereafter, the petitioner made two deposits, one of Rs. 6.00 lakhs and another of Rs. 22,000/-. However, then a notice under Section 13(4) of the SARFAESI Act has been issued on 11.04.2016, which is under challenge in this petition.

2. We have heard learned counsel for the petitioner as well as Mr. Deepak Kumar, learned counsel for the opposite party-ICICI Bank and perused the record. With consent of learned counsel for the parties, this petition is being disposed of at this stage.

3. From the statement of account of the petitioner produced by the Bank, it is seen that after adjusting the aforesaid deposit of Rs. 6,22,000/- made by the

petitioner, an amount of Rs. 11,16,317.33 has still been shown as due to be paid by the petitioner. However, from the 1st page of the account, it is clear that 40 overdue instalments (EMI) are due to be paid, which comes to Rs. 5,90,283/- plus future instalments due, amounting to Rs. 1,50,386/-, the total of which comes to Rs. 7,40,669/-, which is to be paid by the petitioner.

4. On being asked to justify the stand of the Bank in requiring the petitioner to pay a sum of Rs. 11,16,317.33, even when the total amount including future instalments comes to Rs. 7,40,669/-, learned counsel for the opposite party-Bank could not justify the same except stating that additional penal interest has also been charged. No policy of the bank for charging additional penal interest has been placed before us. Learned counsel for the Bank was required to file an affidavit justifying the same, which has been filed today. Instead of justifying the charging of penal interest, in paragraph-6 of the said affidavit, it has been stated that the Bank would be agreeable to settle the loan account of the petitioner on payment of Rs. 7,40,669/-, provided it is paid on or before 31.05.2016. They have also demanded Rs. 22,163/-, which is said to have been deposited by the Bank for providing necessary police protection to take physical possession under Section 14 of the Act.

5. This Court takes note of the fact that instead of the liability of the payment of Rs. 7,40,669/- (which includes future instalments with interest), an amount of Rs. 11,16,317.33 has been demanded from the petitioner. A customer normally does not have access to the various policies of the Bank for charging various amounts, which may or may not be justified. Merely because computerized account of the petitioner is produced, without making the customer aware of the policy under which penal interest has been charged, the same, in our view, is highly unreasonable. Once the Bank has been confronted with the facts and has been asked to produce the policy under which they are charging penal interest, instead of producing the same, they have filed an affidavit agreeing to settle the account on payment of a substantially lesser amount of Rs. 7,40,669/-, which also includes future instalments with interest.

6. Scheduled Banks are expected to be fair to the customers. Judicial notice can also be taken of the fact that many a times the Banks are resorting to unfair means for recovery of their dues by threatening the customers of dire consequence if the loan amount is not paid, which amounts may be highly unreasonable, as is clear from the facts of the present case.

7. Without going into the controversy and the legitimacy of the Bank charging penal interest, since the Bank has filed an affidavit agreeing to settle the account of the petitioner on payment of Rs. 7,40,669/-, we allow the same on the condition that no further additional charges would be taken from the petitioner. Keeping in view that the loan period is yet not over, the petitioner shall pay such amount in two instalments, the first one being Rs. 4.00 lakhs, which shall be paid by the petitioner on or before 31.05.2016, and the balance amount of Rs. 3,40,669/- shall be paid on or before 30.06.2016. The proceedings initiated

against the petitioner under the SARFAESI Act shall initially remain suspended and in case the petitioner complies with the aforesaid directions, the proceedings against him shall then be dropped. However, it is made clear that if the petitioner does not comply with any of the conditions indicated herein above, the opposite party-Bank shall be at liberty to recover the entire amount of Rs. 7,40,669/- plus future interest thereon from the petitioner, in accordance with law. In the facts of the case, the Bank shall not be entitled to recover any amount deposited by them for police protection for taking physical possession of mortgaged property as the demand of the inflated amount has been held to be unreasonable. The writ petition stands allowed to the extent indicated above.