(2023) 02 OHC CK 0066

In the Orissa High Court

Case No : Writ Petition (C) No. 9072 Of 2016

M/s. Radha Garments & Another — APPELLANT

Vs

Chief Manager, Punjab National Bank, Cuttack — RESPONDENT

Date of Decision : 08-02-2023

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4)

Citation : (2023) 02 OHC CK 0066

Hon'ble Judges : Jaswant Singh, J;M.S. Sahoo, J

Bench : Division Bench

Advocate : Ajaya Kumar Dash, J.R. Dash

Final Decision : Dismissed

Judgement

1. Petitioner No.1, a Proprietorship concern of Sri Ajay Behera is the principal loanee and petitioner No.2-Smt. Sanjukta Das @ Pal is the guarantor of a Cash Credit Facility availed on 24.12.2011 for a sum of Rs.14 Lakhs from Punjab National Bank, Buxi Bazar Branch, Cuttack. The loan was secured by creating an equitable mortgage of the immovable property owned by petitioner No.2.

2. Due to non-servicing of the account, it was classified as NPA on 10.02.2016 leading to issuance of demand notices dated 29.02.2016/11.03.2016 under Section 13 (2) of the SARFAESI Act, 2002 (for short “the Act, 2002”) to the principal loanee/petitioner No.1 and the guarantor petitioner No.2 recalling the outstanding liability of Rs.20,56,409/- due as on 29.02.2016 together with further interest, costs, expenses etc.

Admittedly no objections were filed to the demand notice and vide notice dated 03.01.2017 issued under Section 13(4) of the Act, 2002, symbolic possession of the secured asset was assumed.

3. The prayer in the present writ petition is for quashing the aforesaid notices issued under Section 13(2) of the Act, 2002 with a further direction to the Bank

not to put the mortgaged property to sale.

4. This Court on 03.06.2016 has passed the following order:

"W.P.(C) No.9072 of 2016 & MC No.8790 of 2016

Heard learned counsel for the petitioners.

Issue notice to the opposite party by speed post returnable within three weeks, requisites for which shall be filed within three days.

In the interim, it is directed that subject to the petitioners depositing a sum of Rs.4,00,000/- (rupees four lakhs) with the opposite party within two months hence, no coercive action in terms of Section 13(4) of SARFAESI Act, 2002 shall be taken against the property secured till the next date. The petitioner shall not create any third party interest against the same.

List this matter three weeks after.

Issue urgent certified copy."

5. At the time of hearing today, learned counsel for the petitioners submits that he has no instructions to pursue the present writ petition, whereas learned counsel for the Bank submits that on account of non- compliance of the interim directions contained in the order dated 03.06.2016 by deposit of the stipulated amount, the Bank had proceeded to auction the immovable property of the petitioners for a sum of Rs.18,31,000/- and still the outstanding liability to the tune of Rs.11,28,000/- in the instant loan accounts stands.

In the light of no challenge maintainable against a demand notice as per the Scheme of the Act, 2002, we find the present writ petition to be not maintainable. Even the indulgence shown by this Court has been misutilised by the petitioners.

6. In view of the above, the writ petition is dismissed.

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