(2023) 06 OHC CK 0061

In the Orissa High Court

Case No : Writ Petition (C) No.18519 Of 2023

Niranjan Kumar Sena APPELLANT

Vs

Authorized Officer, Union Bank Of India, Cuttack & Others RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Citation : (2023) 06 OHC CK 0061

Hon'ble Judges : R.K.Pattanaik, J;S. K. Mishra, J

Bench : Division Bench

Advocate : S.K. Baral, Anshuram Mishra

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. Instant writ petition is filed by the petitioner challenging the e-Auction notice vide Annexure-12 and at the same time, to allow him to pay the loan amount as per OTS Scheme under Annexure-6 on the grounds stated therein.

3. Learned counsel for the petitioner submits that the petitioner availed loan from opposite party No.3 for an amount of RS 7.97,495/- for construction of a broiler firm and paid a total amount of Rs.9,91,900/-, however, due to financial crisis, he could not pay back the outstanding dues. It further submitted that the petitioner thereafter approached opposite party No.3 with a request to settle the loan account. It is in fact claimed that the petitioner had approached opposite party No.2 and there was a discussion for full and final settlement of the loan account with the deposit of Rs. 4.25 lac but in spite of such a decision, e-Auction notice vide Annexure-12 was issued which is an action arbitrary in nature and bad in law and hence, liable to be interfered with and quashed. On the other hand, the learned counsel for the opposite parties submits that the petitioner has been a chronic defaulter and the loan amount has been classified as NPA in the mean while and rightly, therefore, opposite party No.3 proceeded and issued e-Auction notice under Annexure-12 and since the action is as per and in

accordance with SARFAESI Act, it should not be tampered with and disturbed.

4. In course of hearing, learned counsel for the petitioner submits that the discussion at the Regional Head Office was for closure of the loan account with a deposit of Rs. 4.25 lac as full and final settlement of the amount as revealed from Annexures-7, 8 and 9 including Annexure-10 which indicates that the petitioner was called upon to submit an enhanced offer for consideration of the Bank. It is contented that despite such discussion with opposite party No.2, the Bank did not accept the amount i.e. Rs.4. 25 lac towards full and final settlement. In response to the above, learned counsel for the opposite parties submits that since the petitioner is a chronic defaulter and the loan account has already been classified as NPA and that in the meantime, the offer which was submitted by him was rejected as evident from Annexure-10, the action of the Bank is justified. However, on a query, learned counsel for the opposite parties submits that he is required to take instruction with regard to any enhanced offer later on received from the petitioner.

5. To consider the contention of the petitioner, the Court is the view that the Bank should be directed apprise it as to if any enhanced offer under the OTS Scheme is pending decision. Accordingly, it is ordered.

6. List on 26th June, 2023, the date on which, the opposite parties shall inform the Court with regard to any enhanced offer so received from the petitioner and the Banks' decision taken thereon.

I.A No.8575 of 2023

1. Learned counsel for the petitioner submits that the petitioner is inclined to close the loan account with a full and final settlement of the outstanding dues and ready and prepared to deposit an amount of Rs. 4.25 lac which was originally agreed upon by the Bank and until such time, no coercive action should be taken vis-à-vis the secured assets pursuant to Annexure-12. An objection is received from learned counsel for the opposite parties on the ground that the outstanding dues as against the loan account stands at Rs. 7,79,033/- as on 31st May, 2023.

2. However considering Annexures-7, 8, 9 & 10 and the fact that the petitioner is ready and willing to deposit an amount of Rs 4.25 lac, the Court is of the view that till the reply is received from the opposite parties, he should be protected by an interim order.

3. Accordingly, it is ordered.

4. In the result, this Court as an interim measure directs the petitioner to deposit an amount of Rs. 4.25 lac (without any prejudice to the rights of the parties) within a week from today and in the event, such direction is complied with there shall be no coercive action pursuant to Anenuxre-12 till the next date.

5. List on the date fixed.

6. An urgent certified copy of this order be issued as per rules and in course of the day.

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