(2022) 06 OHC CK 0044

Orissa High Court

Case No: Writ Petition (C) No. 14016 Of 2022

Saankhya Educational Society		APPELLANT
	Vs	
Chief ManagerCum Authorized Officer, State Bank Of India, Visakhapatnam And Another		RESPONDENT

Date of Decision: June 17, 2022

Acts Referred:

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(2), 13(4)

Citation: (2022) 06 OHC CK 0044

Hon'ble Judges: Sashikanta Mishra, J

Bench: Single Bench

Advocate: Prasanta Kumar Panda, P.V. Balkrishna

Final Decision: Disposed Of

Judgement

1. This matter is taken up through Hybrid mode.

2. Mr. Balkrishna, learned counsel appears and submits that he has instruction to appear on behalf of the Opposite Party-Bank.

3. Mr. Panda, learned counsel for the Petitioner submits that the case has a chequered career. Earlier the Petitioner had approached this Court in

W.P.(C) No.18438 of 2016 assailing the notices issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short, SARFAESI ActÃ¢â,¬â„¢) issued by the State Bank of Hyderabad and prayed for a direction to

collect the outstanding loan amount from one Gayatri Group of Educational Institution (for short, Ã¢â,¬ËœGGEIÃ¢â,¬â„¢). Said GGEI had also filed W.P.(C)

No.14566 of 2016 assailing the self-same notice. Both the Writ Petitions were disposed of vide a common order dated 27th February, 2017

(Annexure-1) with an observation that in case the Petitioner in W.P.(C) No.14566 of 2016 (GGEI) deposits a sum of Rs.50.00 lakh (rupees fifty lakh)

only before the Opposite Party-Bank within a period of two weeks and files an application for settlement of the loan amount by way of rephasement

in such event, the Opposite Party-Bank shall give a personal hearing to the said Petitioner in accordance with law. This Court also for the convenience

of the parties fixed the date of appearance of the parties before the Bank on 15th March, 2017.

4. Accordingly, said GGEI deposited a sum of Rs.50.00 lakh. An amount of Rs.1.00 crore had already been deposited with the Bank pursuant to the

interim direction of this Court. As such, the GGEI had deposited a sum of Rs.1.50 crore before the Opposite Party Bank. Thereafter, the State Bank

of Hyderabad from which the Petitioner and said GGEI had taken loan merged with the State Bank of India. After merger, the State Bank of India

also issued notice under Section 13(2) and (4) of the SARFAESI Act. Assailing notice under Section 13(2) and(4), the present Petitioner filed W.P.

(C) No.12472 of 2021 with a prayer to direct the GGEI to pay the entire loan amount, which is pending for consideration. While the matter stood thus,

the Opposite Party-Bank went for e-auction of the property for which the Petitioner was constrained to move this Court in W.P.(C) No.27274 of

2021. Considering the submission made by learned counsel for the Petitioner, this

Court, vide order dated 6th September, 2021 passed the following order:-

Ã¢â,¬Å“xx xx xx

Let auction process continue, but no final decision shall be taken on the same without leave of this Court till the next date. The bidders shall be informed about pendency of this writ petition and the interim order passed by this Court at the time of their participation in the bidding process.

xx xx xxÃ¢â‚¬â€‹

Although the matter was directed to be listed on 1st November, 2021, but the same could not be taken up on the date fixed.

5. At this juncture, the Opposite Party-Bank issued e-auction notice dated 28th April, 2022 (Annexure-7) and proceeded with said auction. It is

submitted by Mr. Panda, learned counsel for the Petitioner that in view of the interim order passed, the Bank could not have proceeded with e-auction

held on 20th May, 2022. He, therefore, submits that the notice under Annexure-7 is not sustainable in the eyes of law and is liable to be set aside.

6. Mr. Balkrishna, learned counsel for the Opposite Party-bank submits that the writ petition is not maintainable. There is suppression of facts. He,

however, submits that the Bank if permitted can file affidavit bringing all the circumstances on record, which compelled the Bank to publish notice

under Annexure-7 and proceed with the auction. It is submitted by Mr. Balkrishna, learned counsel that in the meantime, auction sale pursuant to

notice under Annexure-7 has already been held on 20th May, 2022 and sale certificate has been issued in favour of the successful bidder.

7. Mr. Samir Kumar Mishra, learned counsel submits that he has instructions to appear on behalf of GGEI, which is a necessary party to be impleaded

in this case. But the Petitioner without doing so has filed this writ petition. He, therefore, submits that the writ petition is not maintainable for non-

impletion of necessary party.

8. Taking into consideration the rival contentions of the parties, this Court finds that the matter requires consideration.

9. Issue notice. Since Mr. Balakrishna, learned counsel accepts notice on behalf of the Opposite Parties, no requisites for issuance of notice need be

filed. An extra copy of the writ petition be served on Mr. Balakrishna, learned counsel by 21st June, 2022, as undertaken by learned counsel for the

Petitioner.

10. The Petitioner is also directed to implead the Gayatri Group of Educational Institution as well as successful bidder(s) as parties to the writ petition.

Mr. Balkrishna, learned counsel for Opposite Party-Bank also undertakes to supply the details of successful bidder(s) to learned counsel for the

Petitioner to enable him to file application for impletion of necessary parties.

11. A copy of the writ petition shall be served on Mr. Samir Kumar Mishra, learned counsel who has instruction to appear on behalf of Gayatri Group

of Educational Institution.

12. Put up this matter in the week commencing from 18th July, 2022 indicating name of Mr. P.V. Balkrishna, learned counsel for Opposite Party-Bank

and Mr. Samir Kumar Mishra, learned counsel for GGEI along with W.P.(C) No.12472 of 2021, W.P.(C) No.27274 of 2021 as well as W.P.(C)

No.30457 of 2020 indicating the names of learned counsel appearing therein.

13. As an interim measure, it is directed that no registered sale deed pursuant to auction notice shall be executed and possession of the secured assets

shall not be handed over to the successful bidder(s) pursuant to the auction held on 20th May, 2022 in terms of notice under Annexure-7 till the next

date.

14. Mr. Balkrishna, learned counsel for the Opposite Party-bank, if so advised, may file detailed counter affidavit serving copy thereof on learned

counsel for the Petitioner as well as Mr. Mishra, learned counsel for Gayatri Group of Educational Institution in the meantime.

Issue urgent certified copy of the order on proper application.

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