

GAHC010007482015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/337/2015

AJIT KUMAR PAUL
S/O- LT. MANINDRA CHANDRA PAUL, A R/O- SHANKARNAGAR, PANDU,
GHY- 12, P.S.- JALUKBARI, DIST.- KAMRUP M, ASSAM.

VERSUS

THE UNION OF INDIA and 8 ORS
REP. BY THE SECY., MINISTRY OF FINANCE, NEW DELHI.

2:UCO BANK
REP. BY..... 10
BTM SARANI
BRABOURNE ROAD
KOLKATTA- 700001
WEST BENGAL
NOTICE TO BE SERVED ON UCO BANK
MALIGAON BRANCH
MALIGAON CHARIALI
P.O.- MALIGAON
GHY-11
DIST.- KAMRUP M
ASSAM.

3:UCO BANK
REP. BY ITS BRANCH MANAGER
MALIGAON BRANCH
MALIGAON CHARIALI
P.O.- MALIGAON
GHY- 11
DIST.- KAMRUP M
ASSAM.

4:THE BRANCH MANAGER
UCO BANK
MALIGAON BRANCH
MALIGAON CHARIALI
P.O.- MALIGAON
GHY- 11
DIST.- KAMRUP M
ASSAM.

5:THE DEBT RECOVERY TRIBUNAL
REP. BY ITS PRESIDING OFFICER
SECOND FLOOR
APSARA BUILDING
DR. B. BARUAH ROAD
ULUBARI
GHY- 7
DIST.- KAMRUP M
ASSAM.

6:THE PRESIDING OFFICER
DEBT RECOVERY TRIBUNAL
AT GUWAHATI
SECOND FLOOR
APSARA BUILDING
DR. B. BARUAH ROAD
ULUBARI
GHY- 7
DIST.- KARMUP M
ASSAM.

7:M/S ORBITAL NETWORK AND SURGICAL MART
ROOM NO. 404
3RD FLOOR
BTAHI COMPLEX
OPP. ASTC WORKSHOP
ULUBARI
GHY- 7
DIST.- KAMRUP M
ASSAM
REP. BY ITS PROPRIETOR
MS. SARASWATI CHAKRABORTY.

8:MS. SARASWATI CHAKRABORTY
W/O- SRI KANCHAN CHAKRABORTY
PROPRIETOR OF M/S ORBITAL NETWORK AND SURGICAL MART
A R/O- NICHALPUR
BEZBARUA NAGAR
MALIGAON

GHY- 11
DIST.- KAMRUP M
ASSAM.

9:KANCHAN CHAKRABORTY
S/O- BIJAY KRISHNA CHAKRABORTY
A R/O- BEZBARUA NAGAR
MALIGAON
GHY- 11
DIST.- KAMRUP M
ASSAM

Advocate for the Petitioner : MR.M PANDIT

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

21.04.2023

Heard Shri D Nandi, learned counsel for the petitioner, who has put to challenge an order dated 16.10.2014 by the learned Debt Recovery Tribunal (DRT), Guwahati in Petition Nos. 75 & 175/2014 arising out of OA No. 132/2012. None appeared for the respondents.

2. It appears that the respondent-Bank had filed the Original Application in which the Petition No. 75/2014 was filed for allowing the Bank to exhibit three numbers of affidavits and two numbers of Pay-in-Slip in its evidence on affidavit. The Petition No. 175/2014 was filed under Section 19 (25) of the Recovery of Debts due to the Banks and Financial Institution Act, 1993 read with Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993 read with Order 6, Rule 17 of the CPC praying for amendment of the OA No. 132/2012.

3. The learned counsel for the petitioner, Shri Nandi submits that the petitioner

was denied the scope of filing an additional objection before passing of the impugned order in the aforesaid petitions and therefore, prejudice has been caused to the petitioner. He also submits that while this writ petition was moved in the year 2015, there was an interim order dated 16.02.2015 whereby further proceedings in the OA No. 132/2012 before the learned DRT, Guwahati was suspended.

4. This writ petition is pending since the year 2015 and the matter was adjourned on a number of occasions at the instance of the petitioner. On the last date i.e., 11.04.2023, the note dated 01.02.2023 of the learned Lawazima Court was accepted whereby service was held to be complete.

5. With regard to the challenge made whereby prejudice has been claimed to be suffered on account of not giving a further opportunity to file additional-objection, this Court is of the opinion that there is no such provision for filing additional objection. Rather, the order dated 16.10.2014 would clearly reveal that not only the present petitioner had filed the written objections on both the petitions, the said objections were duly considered in the elaborate order passed by the learned DRT, Guwahati. The order also reflects that the principle of amendment has been properly discussed, including the aspect of changing the nature and character of the case. There is also a clear finding with regard to the objection pertaining to delay whereby the learned DRT, Guwahati has referred to a decision of the Hon'ble Supreme Court in the case of ***Salem Advocate Bar Association, TN Vs. Union of India***. Para 26 of the said judgment read as follows:

“26. Order VI Rule 7 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2022 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless court comes to the conclusion that in spite of due

diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

6. This Court in exercise of powers of judicial review is required to examine the lawfulness of the orders which are under challenge and the order passed by the learned DRT dated 16.10.2014 appears to have been passed by taking into consideration all the relevant factors. This Court also cannot overlook the aspect that the very objective of the enactment of the DRT Act and Rules was to facilitate the Banks and financial institutions to take steps for recovery of public money. This Court has also noticed that though an interim order was passed on 16.02.2015, the same was only until the next date fixed. The order sheet further reveals that on and from 30.07.2015, there is no continuation of the said interim order. This Court, however, has been apprised that the proceedings are still under suspension.

7. In view of the above, this Court is of the view that the order dated 16.10.2014 passed by the learned DRT, Guwahati does not suffer from any infirmity and accordingly, the writ petition stands dismissed. Consequently, the interim order stands vacated.

JUDGE

Comparing Assistant