

GAHC010029562023



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

Case No. : WP(C)/830/2023

M/S MINTU NATH
REP. BY THE PROPRIETOR SRI MINTU NATH, S/O. LT. NALINI KANTA
NATH, R/O. HOUSE NO. 27, LAL GANESH, LOKNATH PATH, P.O.
UDALBAKRA, DIST. KAMRUP (M), ASSAM.
VERSUS
INDIAN BANK AND ANR.
HAVING ITS REGD. OFFICE AT NETAJI SUBHASH ROAD, KOLKATA-700001,
AND BRANCH GUWAHATI AT HEM BARUAH ROAD, MACHKHOWA, OPP.
A.S.T.C. BUS STAND, GUWAHATI-781009 REP. BY THE BRANCH MANAGER.
2:THE AUTHORIZED OFFICER
INDIAN BANK
GUWAHATI BRANCH
HEM BARUAH ROAD
MACHKHOWA
OPP. A.S.T.C. BUS STAND
GUWAHATI-781009

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent : MR. B SHARMA (SC, INDIAN BANK)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

15.02.2023

(M. Zothankhuma, J)

1. Heard Mr. S.P. Choudhury, learned counsel for the petitioner, who submits that a direction should be issued to the respondent bank, not to take any

coercive action against the land of the petitioner and to grant the petitioner some time to deposit the 20% total outstanding amount which had been directed to be made by the DRT, Guwahati in it's order dated 27.01.2023, passed in I.A. 68/2023 & I.A 70/2023.

2. The issue at hand is with regard to non-payment of the loan amount taken by the petitioner. In view of the non-payment of the loan amount, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act, 2002) was put into play and Auction Sale Notice dated 20.12.2022 was issued by the respondent bank. The petitioner appeared before the DRT, Guwahati challenging the action taken by the respondent bank under the SARFAESI Act, 2002, for the proposed selling of the property of the petitioner which had been mortgaged as security for the loan.

3. The learned DRT in it's order dated 27.01.2023 allowed the respondent bank to conduct the sale of the property. However, the sale was not to be confirmed on the condition that the petitioner would deposit 50% of the outstanding dues with the bank. Out of the 50% outstanding dues to be paid to the bank, the petitioner was to deposit 10% as on 27.01.2023, 20% within 2 (two) weeks thereafter and the remaining 20% within a further two weeks thereafter. The 'e-auction' sale scheduled to be held on 27.01.2023 was allowed to go on but the Confirmation of Sale was stayed, subject to payment of the outstanding dues as stipulated in the order dated 27.01.2023 passed by the DRT, Guwahati.

4. The petitioner's counsel submits that subsequent to the order dated 27.01.2023, the petitioner deposited 10% out of the 50% outstanding dues on 27.01.2023. Subsequently, another 20% has been deposited on 10.02.2023 and 14.02.2023. However, the last 20% out of the 50% to be paid has not been paid till date. The learned counsel submits that an application had been made by the petitioner before the DRT, Guwahati, vide IA No.106/2013, praying to allow the petitioner to make payment of the 20% of the 50% deposit to be made in another two weeks w.e.f. 10.02.2023, by modifying the order dated 27.01.2023. The petitioner's counsel submits that the DRT, Guwahati rejected the petitioner's IA No.106/2013 by a verbal order and as such, he could not annex any order of the DRT, Guwahati rejecting IA No.106/2023 in this petition.

5. Mr. B. Sharma, learned counsel appearing for the Indian Bank, Guwahati Branch submits that there is nothing in the pleadings to show that the petitioner had paid any amount after depositing 10% of the amount on 27.01.2023. He also submits that the DRT, Guwahati had rejected the petitioner's IA No.106/2023 by way of a written order and not a verbal order and in this regard he has submitted a copy of the order dated 08.02.2023 passed by the DRT, Guwahati rejecting IA No.106/2023. He also submits that the petitioner would have to avail of the alternative remedy available against the order dated 27.01.2023 and 08.02.2023 in terms of Section 18 of the SARFAESI Act, 2002.

6. We have heard the learned counsels for the parties.

7. Though the petitioner's counsel has submitted that I.A. No.106/2023 had

been rejected by way of a verbal order and that no written order had been passed by the DRT, we find that said submission is false, inasmuch as, the order dated 08.02.2023 passed by the DRT, Guwahati rejecting I.A. No.106/2023 has been submitted to us.

8. Section 18 of the SARFAESI Act, 2002 provides that any person aggrieved by any order made by the DRT, Guwahati under Section 17, may prefer an appeal, along with such fee as may be prescribed to an Appellate Tribunal within 30 (thirty) days, from the date of receipt of the order of the DRT, In the present case, no challenge has been made to the orders dated 27.01.2023 and 08.02.2023 passed by the DRT, Guwahati. As such, no order modifying the order dated 27.01.2023 can be made without challenging the order dated 08.02.2023 passed in I.A.106/2023. Further, we are of the view that the petitioner should avail the statutory alternative remedy available in terms of Section 18 of the SARFAESI Act, 2002, with regard to his grievance

9. The writ petition is accordingly dismissed.

The order dated 08.02.2023 passed in I.A. No.106/2023 and I.A. No.107/2023 is made a part of the record and marked as Annexure-'X'

JUDGE

JUDGE

Comparing Assistant