

GAHC010064182023



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

Case No. : WP(C)/1670/2023

MINU SAIKIA AND ANR
W/O- LATE ABONI SAIKIA,
R/O- CHENGELIGAON, KENDUGURI,
P.O.- CHENGELIGAON, 785010,
P.S.- JORHAT, DIST.- JORHAT,
ASSAM.

2: RIMI SAIKIA
D/O- LATE ABONI SAIKIA

R/O- CHENGELIGAON
KENDUGURI

P.O.- CHENGELIGAON
785010

P.S.- JORHAT
DIST.- JORHAT

ASSAM

VERSUS

THE PUNJAB NATIONAL BANK AND 4 ORS
ZONAL OFFICE,
REPRESENTED BY ITS GENERAL MANAGER,
UBI BUILDING, 2ND FLOOR, HEM BARUA ROAD,
PANBAZAR, GUWAHATI- 781001,
DIST.- KAMRUP(M), ASSAM.

2:THE REGIONAL MANAGER
PUNJAB NATIONAL BANK
BABUPATTY
JORHAT

PIN- 785001

DIST.- JORHAT
ASSAM.

3:THE AUTHORISED OFFICER
CIRCLE SASTRA CENTRE
PUNJAB NATIONAL BANK
JORHAT CIRCLE OFFICE
BABUPATTY

PIN- 785001

DIST.- JORHAT
ASSAM.

4:THE BRANCH MANAGER
PUNJAB NATIONAL BANK
SEUNI ALI BRANCH
JORHAT

P.O.- CHENGELIGAON
785010

P.S.- JORHAT

DIST.- JORHAT
ASSAM.

5:PANKAJ SAIKA
S/O- LATE ABONI SAIKIA

R/O- CHENGELIGAON
KENDUGURI

P.O.- CHENGELIGAON
785010

P.S.- JORHAT
DIST.- JORHAT

ASSAM

For the Petitioners : Ms. S.G. Baruah, Advocate.

For the Respondents : Mr. A. Ganguly, Standing Counsel, Punjab National Bank for
respondent Nos.1 to 4.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

22.03.2023

Heard Ms. S.G. Baruah, learned counsel for the petitioners. Also heard Mr. A. Ganguly, learned standing counsel, Punjab National Bank, representing the respondent Nos.1 to 4. None appears for the respondent No.5.

The present petition has been filed by the petitioners challenging the auction of the land in question proposed to be undertaken by the respondent Bank for default in payment of the loans, by the borrower-respondent No.5. It is submitted that the petitioner Nos.1, 2 and the respondent No.5 are the co-owners of the land in question and that the respondent No.5 is the son of the petitioner No.1. The petitioners submit that the land was given in equitable mortgage to the respondent Bank by respondent No.5 at the time of taking of the loan, which fact was not disclosed to the petitioner Nos.1 & 2. Upon becoming aware of the Notice for auction served on respondent No.5, the petitioners have approached the Debts Recovery Tribunal, Guwahati by filing necessary application praying for appropriate orders and also for stay of the proposed auction.

Ms. S.G. Baruah, learned counsel for the petitioners submits that the application is still pending before the Debts Recovery Tribunal, Guwahati, however, the Presiding Officer of the Debts Recovery Tribunal is on leave at present. She further submits that the auction is scheduled to be held on 24.03.2023 by the respondent Bank. Accordingly, the petitioners have approached this Court seeking urgent orders for stay of the auction proceedings.

Mr. A. Ganguly, learned counsel representing the respondent Bank has

submitted that the petitioners are indeed aware of the equitable mortgage, in view of a joint affidavit, which was signed by the petitioner Nos.1, 2 and the respondent No.5. Under these circumstances, the contention of the petitioners that they were unaware of the equitable mortgage pledged in favour of the Bank by respondent No.5, is belied by the affidavits jointly executed by the petitioner and respondent No.5, which are presented before this Court.

Be that as it may since the petitioners have already approached the Debts Recovery Tribunal, Guwahati, we dispose of this writ petition with a direction that though the auction may proceed but the sale of the property as mentioned in the Notice dated 02.08.2022 shall not be confirmed by the respondent Bank, subject to the petitioners depositing 25% of the amount as per Demand Notice dated 02.08.2022 to the respondent Bank within a period of 3(three) days from today. It is made clear that this order will be effective only upon deposit of the amount by the petitioners to the respondent Bank, as directed by this Court.

With the above observations and directions, the writ petition is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant