

GAHC010152472023



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

**Case No. : CRP/137/2023**

M/S MARBOH BAMBOO PRODUCTS PVT. LTD. AND 4 ORS  
NONGSDER BLOCK-VI, BEHIND ICAR UMIAM, BORAPANI, RI-BHOI  
DISTRICT, MEGHALAYA.

2: BENJELIA M MARBOH  
DIRECTOR OF M/S MARBOH BAMBOO PRODUCTS PVT. LTD.  
SON OF LATE ROBERT MARBANIANG  
R/O- POHKSEH (EAST)  
SHILLONG-793006  
MEGHALAYA.

3: LEONALDO M MARBOH  
DIRECTOR OF M/S MARBOH BAMBOO PRODUCTS PVT. LTD.  
SON OF LATE ROBERT MARBANIANG  
R/O- POHKSEH (EAST)  
SHILLONG-793006  
MEGHALAYA.

4: FERNANDO G MARBOH  
DIRECTOR OF M/S MARBOH BAMBOO PRODUCTS PVT. LTD.  
SON OF LATE ROBERT MARBANIANG  
R/O- POHKSEH (EAST)  
SHILLONG-793006  
MEGHALAYA.

5: SMT. BADAHUN M MARBOH  
LEGAL HEIRS OF SMTI. PRISCA MARBOH (SINCE DECEASED)  
R/O- 1558  
UMPLING DONG SHANENG  
UMPLING  
RYNJAH  
EAST KHASI HILLS  
MEGHALAYA  
PIN- 793006

VERSUS

STATE BANK OF INDIA AND 2 ORS  
HEAD OFFICE, MADAM CAMA ROAD, MUMBAI-400021.

2:STATE BANK OF INDIA  
SARB (STRESSED ASSETS RECOVERY BRANCH)  
BAMUNIMAIDAN  
GUWAHATI-781021.

3:STATE BANK OF INDIA  
RASMECCC  
SHILLONG MAIN BRANCH CAMPUS  
M.G. ROAD  
SHILLONG-793001  
MEGHALAYA

**Advocate for the Petitioner** : MR. S MITRA

**Advocate for the Respondent** : MR. K K NANDI (r-1 TO 3)

**BEFORE**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 13-10-2023**

Heard Mr. S. Mitra, learned counsel for the petitioners and Mr. K.K. Nandi, learned counsel for the respondents.

2. By filing this application under Article 227 of the Constitution of India, the petitioners have assailed the judgment and order dated 19.02.2019, passed by the learned Debts Recovery Tribunal, Guwahati in OA No.227/2016. The prayer of the petitioners is to interfere with the said order and modify it to the extent that the plot of land described in Schedule-A of this application is neither the mortgage property nor owned by the petitioner no.2 and that it was only the lease hold right that was mortgage to the respondents.

3. That under the provisions of section 20 of the Recovery of Debts and Bankruptcy Act, 1993, the petitioners who were the defendants in the said original application had a statutory right of filing an appeal to the Appellate Tribunal. The petitioners had availed this right by filing an appeal before the Debts Recovery Tribunal at Kolkata. From the materials available on record it appears that there was some delay in filing the appeal. However, the learned Appellate Tribunal by an order dated 29.08.2022 passed in IA 191/2020, had condoned the delay and the said interlocutory application was disposed of.

4. In connection with IA 425/2019, which was filed for waiver of pre-deposit as required under section 21 of the Recovery of Debts and Bankruptcy Act, 1993, the learned Debts Recovery Appellate Tribunal, by an order dated 29.08.2022, had directed the petitioners to deposit 35% of the decretal amount within a period of 4(four) weeks failing which it was ordered that the appeal shall stand dismissed is not maintainable. Thereafter, by order dated 13.03.2023, as direction to make pre-deposit is not complied with despite the extended time granted by order dated 22.02.2022 for making pre-deposit, the appeal was dismissed being not maintainable for want of pre-deposit.

5. It may be mentioned that the learned counsel for the respondents has produced a copy of order of the 3-Judge Bench of the Supreme Court of India, passed in the case of *Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A. Kasliwal*, (2021) 3 SCC 549, the requirement of statutory provision as contained in section 21 was held to be mandatory.

6. Neither the order dated 29.08.2022 nor the order dated 13.03.2023, passed by the learned Debts Recovery Appellate Tribunal, Kolkata have been challenged in this application. Hence, the said orders have attained finality.

7. However, the petitioners have challenged the judgment dated 19.02.2019 passed by the Debts Recovery Tribunal, Guwahati in OA 227/2016. It has been urged that the property described in Schedule B was not the mortgaged property.

8. In this regard the Court is of the considered opinion that in exercise of jurisdiction under Article 227 of the Constitution of India, this Court can only examine the legality of the order. The factual matrix and evidence has to be re-appreciated by the learned Debts Recovery Tribunal and this Court would not venture to examine the evidence available before the Debts Recovery Tribunal and turn itself to a Court of appeal when the petitioners have abandoned their appeal before the Debts Recovery Appellate Tribunal, Kolkata. In the case of *Ouseph Mathai v. M. Abdul Khadir, (2002) 1 SCC 319*, it was held by the Supreme Court of India that the High Court is not automatically authorised to grant relief when statutory procedure is exhausted. It was also held that petition under Article 227 of the Constitution of India, cannot be treated as an extension of statutory appeal or revision and it was further held that a mere wrong decision is not a ground to exercise jurisdiction under Article 227 of the Constitution of India.

9. In the said context, it would be also mentioned that in the case of *Bahutmal Raichand Oswal v. Laxmibai R. Tarta, AIR 1975 SC 297*, the Supreme Court of India had held that the High Court will not, in guise of exercise in jurisdiction under Article 227, convert itself into a Court of appeal as the legislature has not conferred a right of appeal thereunder.

10. When the petitioners had abandoned the appeal by not making a pre-deposit as required under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, the judgment and order passed by the Debts Recovery Tribunal had

attained finality. Moreover, before filing the appeal before the Debts Recovery Appellate Tribunal, the petitioners had not filed any application for review before the Debts Recovery Tribunal, Guwahati as envisaged under Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993 to re-agitate before the said learned Tribunal that it had made error in appreciating the evidence relating to mortgage of land described in Schedule-B of this application.

11. Accordingly, when the petitioners had abandoned their appeal as referred above by not making any statutory pre-deposit, it is not for this Court to examine the judgment passed by the Debts Recovery Tribunal as the Court of appeal.

12. Accordingly, in view of the discussions above, this application stands dismissed.

13. There shall be no order as to cost.

**JUDGE**

**Comparing Assistant**