

GAHC010191282023



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

Case No. : WA/334/2023

M/S VANTAGE POINT COMMUNICATIONS (REP BY ITS PARTNER MR. ARIJIT SAIKIA) AGED ABOUT 49 YEARS, S/O LATE BIZIT SAIKAI, HOUSE NO. 3, 18TH EAST BYE LANE, SUNDARPUR, OPP. NRL PETROL PUMP, R.G. BARUAH ROAD, GUWAHATI-781005.

VERSUS

1: THE STATE OF ASSAM AND 4 ORS. THROUGH ITS COMMISSIONER AND SECRETARY, HOME AND POLITICAL DEPARTMENT, DISPUR, JANATA BHAVAN, G.S. ROAD, DISPUR, GUWAHATI- 781005.

2: THE DEPUTY COMMISSIONER CUM DISTRICT MAGISTRATE KAMRUP(M) HENGARABARI GUWAHATI- 781005 ASSAM.

3: THE ASSTT. COMMISSIONER AND EXECUTIVE MAGISTRATE KAMRUP(M) HENGARABARI GUWAHATI- 781005 ASSAM.

4: THE COMMISSIONER OF POLICE GUWAHATI ASSAM PAN BAZAR GUWAHATI- 781001.

5: PUNJAB NATIONAL BANK (REP. BY ITS AUTHORISED OFFICER) SASTRA CENTRE NILGIRI MANSION 1ST FLOOR BHANAGARH G.S. ROAD GUWAHATI- 781005

For the Appellant(s) : Mr. I.S. Mazumdar, Advocate.

For the Respondent(s) : Mr. N. Das, Junior Govt. Advocate, Assam for respondent Nos.1 to 4.

: Mr. A. Ganguly, Standing Counsel, Punjab National Bank for respondent No.5.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

11.09.2023

The instant intra-Court writ appeal is directed against the judgment and final order dated 04.08.2023 passed by the learned Single Judge in WP(C) No.3161/2023, whereby the writ petition preferred by the writ petitioner (respondent No.5 herein) has been allowed.

We have heard and considered the submissions advanced at bar and have gone through the material placed on record.

The aforesaid writ petition came to be filed by the respondent No.5 Punjab National Bank by impleading the appellants herein as respondent Nos.5, 6 & 7, respectively. The writ petition was preferred seeking a direction to the respondent Nos.2, 3 & 4, i.e. the Deputy Commissioner-cum-District Magistrate, Kamrup (Metro); the Assistant Commissioner and Executive Magistrate, Kamrup (Metro) and the Commissioner of Police, Guwahati, Assam, respectively, to provide police protection and assistance to the petitioner Bank for taking physical possession of the mortgaged property.

A perusal of the material placed on record of this appeal would indicate that initially, while entertaining the writ petition, the learned Single Bench vide order dated 02.06.2023, directed issuance of notices to the respondent Nos.5, 6 & 7 (appellants herein). The matter was taken up by the Lawazima Court on 18.07.2023, wherein it was reported that the writ petitioner had not taken steps for service of notice upon the respondent Nos.5, 6 & 7 despite the order dated 02.06.2023.

The appellants assert that without ensuring service of notice upon them, the writ petition came to be decided by order dated 04.08.2023 and the

State authorities (respondent Nos.2, 3 & 4 in the writ petition) were directed to fix a suitable date in communication with the Bank so as to take physical possession of the mortgaged assets.

The appellants herein being the respondents in the writ petition have approached this Court by way of this appeal pleading that the impugned order suffers from the vice of non-adherence to the principles of natural justice by not ensuring service of notice upon the appellants herein despite they being impleaded as parties in the writ petition.

Mr. I.S. Mazumdar, learned counsel representing the appellants, vehemently and fervently urges that the impugned order is bad in the eyes of law because inspite of issuance of notice to the appellants, the respondent/writ petitioner did not take steps for effecting service and yet, the learned Single Bench, proceeded to decide the writ petition in absence of the appellants herein.

Mr. A. Ganguly, learned standing counsel representing the respondent Bank (writ petitioner) submitted that there is no requirement to hear the loanee or the guarantor in proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and thus, there was no genuine need to hear the appellants in the writ petition, which was simply filed for seeking police aid to ensure the compliance of the mandate of Section 14 of the SARFAESI Act. Nonetheless, he was not in a position to dispute the fact that the appellants herein were impleaded as parties in the writ petition.

It is also not in dispute that the learned Single Bench directed issuance of notice to the appellants (respondent Nos.5, 6 & 7 in the writ petition) by order dated 02.06.2023. The writ petitioner, i.e. the Bank, did not take steps for

service and ignoring the earlier order of issuing notice to the appellants, the writ petition was decided on 04.08.2023. There may be some merit in the argument of Mr. Ganguly that in proceedings under Section 14 of the SARFAESI Act, there is no requirement of hearing the defaulter(s) or the guarantor(s) but we are of the view that as earlier the Commissioner concerned had refused to provide aid to the Bank for securing possession of the mortgaged assets and since the Bank had approached the Writ Court for seeking a direction upon the State authorities, there was no justification for taking up the writ petition without ensuring service of notice upon the appellants herein.

At this stage, Mr. Ganguly urged that the secured assets have already been auctioned for a value of Rs.1,77,00,000/- (Rupees One Crore Seventy Seven Lakhs) and a Sale Certificate has also been issued to one Shri Prem Kumar Kyal. Mr. Ganguly urges that in case the matter is remanded to the learned Single Bench for fresh consideration, the Bank may be permitted to implead the said Shri Prem Kumar Kyal as a party respondent in the proceedings. He further points out that the appellants herein have been unsuccessful in their endeavour to seek setting aside of the securitization proceedings before the Debts Recovery Tribunal as well as Debts Recovery Appellate Tribunal.

In view of the facts noted above, without prejudice to the right of the writ petitioner Bank to gain possession of the secured assets and hand the same over to the auction purchaser by adopting the lawful procedure, while setting aside the impugned order dated 04.08.2023, it is hereby directed that the WP(C) No.3161/2023 shall be restored to its original number. The appellant Bank is given liberty to implead the auction purchaser as a party respondent in the proceedings. The counsel representing the appellants and the respondents

shall remain present before the Writ Court on **09.10.2023**, whereafter the writ petition shall be heard and decided afresh as per law.

The writ appeal is allowed in the above terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant