

GAHC010220652023



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

Case No. : WP(C)/5768/2023

RAJIB BORTHAKUR
S/O- BROJEN BORTHAKUR,
R/O- ARUN KALITA ROAD, CHANDMARI, WARD NO 10, OF GOLAGHAT
TOWN,
P.O AND P.S- GOLAGHAT

VERSUS

THE STATE BANK OF INDIA AND 4 ORS
A BODY CORPORATE DULY CONSTITUTED UNDER THE STATE BANK OF
INDIA ACT 1955, HAVING ITS CENTRAL OFFICE AT MADAM CAMA ROAD,
MUMBAI-21,
AND ONE OF ITS LOCAL HEAD OFFICE AT DISPUR,
OPP. ASOM SACHIVALAYA, GUWAHATI-06 AND CARRYING ON THE
BUSINESS OF BANKING NAMED STATE BANK OF INDIA, GOLAGHAT
BRANCH,
P.O- GOLAGHAT, DIST- GOLAGHAT, ASSAM, PIN-785621

2:THE ASSISTANT GENERAL MANAGER
THE STATE BANK OF INDIA
ZONAL OFFICE IN FRONT OF ASEB
NA ALI
JORHAT-01
DIST- JORHAT
ASSAM

3:THE CHIEF MANAGER
THE STATE BANK OF INDIA
GOLAGHAT BRANCH

P.O- GOLAGHAT
DIST- GOLAGHAT

ASSAM
PIN-785621

4:THE BRANCH MANAGER
THE STATE BANK OF INDIA
PULIBOR ADB BRANCH
GOLAGHAT ASSAM

5:PORAG JYOTI SAIKIA
S/O- LATE PHOTICK SAIKIA

R/O- ATHABARI TEA ESTATE

P.O- ATHABARI

P.S- GOLAGHAT
DIST- GOLAGHAT
ASSAM
PIN-78562

Advocate for the Petitioner : MR. T DAS

Advocate for the Respondent :

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 29-09-2023

(Susmita Phukan Khaund, J.)

1. Rajib Borthakur – the petitioner herein has instituted the present writ petition under Article 226 of the Constitution of India seeking setting aside and quashing of notice to Borrower dated 05.05.2023 and possession notice dated 04.09.2023 issued against the petitioner as per Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act for short).

2. The State Bank of India, the Assistant General Manager – SBI, Jorhat, The Chief Manager-SBI, Golahat Branch, the Branch Manager, SBI, Golaghat and Sri Porag Jyoti Saikia are arrayed as respondent Nos. 1, 2, 3, 4 and 5 respectively.

3. Brief facts leading to this case are that a partnership deed being Deed No. 125 dated 23.03.2015 was duly registered before the senior sub- registrar, Golaghat between the petitioner and the respondent No. 5. A partnership firm in the name and style of “Heron Tractors” came into existence and it was agreed between the partners to run a business of Sales and Service of tractors under the said dealership, especially in the field of agriculture including other businesses, within the Golaghat, Jorhat and Sivasagar districts.

4. It is contended that on 05.05.2023, the petitioner received a notice issued by the Chief Manager of the State Bank of India at Golaghat in connection with Account No.-CC: 35110521939 GECL-39374042572 GECL Extn-40925963848 u/s 13(2) of the SARFAESI Act. Through the notice the petitioner was accorded 60 days time to pay his outstanding liabilities as on 01.05.2023 of Rs. 1,74,01,747/-, along with future interests w.e.f. 02.05.2023 at the contractual rate along with incidental expenses, costs and charges etc. It is averred that the bank statement of the CC accounts of M/s Heron Tractors was not enclosed along with the notice.

5. The schedule B of the notice dated 05.05.2023 is as follows:-

SL NO.	NAME OF THE DOCUMENT	NATURE OF SECURITY	DATE OF EXECUTION	AMOUNT SECURED (Rs.)
1	SME-1	Letter of	31/03/22	1,79,13,319/-

		Arrangement		
2	SME-3	Guarantee Agreement	31/03/22	1,79,13,319/-
3	SME-4	Supplemental Agreement of Loan - cum Hypothecation	31/03/22	1,79,13,319/-
4	SME-5	Creation of Mortgage Property-1 (Mortgage Porag Jyot Saikia & Rajib Borthakur)	17/03/23	1,79,13 319/-
5	SME-6	Confirmation of Mortgage Property1 (Mortgage Porag Jyot Saikia & Rajib Borthakur)	18/03/22	1,79,13,319/-
6	SME-7	Extension of Mortgage Property-2 (Mortgage Sri Rajib Borthakur)	31/03/22	1,99,85,889/-
7	SME-8	1.Confermation for Extension of Mortgage (Mortgage Sri	1/04/22	1,99,85,889/-

		Rajib Borthakur)		
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6. The Schedule-C Part-I and Part-II of the notice are as follows:-

“SCHEDULE 'C'

Part-I

(Hypothecation of Movable Property)

(Please mention all the hypothecated properties viz. Current Assets including Stocks, Stocks in Trade, Receivables, Consumable Stores and Spares and entire current assets and Hypothecated Movable Plant and Machinery etc. of the company mentioned in the documents (Schedule B)

Finished Goods, Stocks in Process, Consumables, Receivables, Advances and all other Current Assets of the unit both present and future.

Part-II

(Equitable Mortgage of Immovable properties)

[Please mention the particulars of the immovable properties mortgaged to the Bank as stated in the documents having reference to the mortgage documents/deeds (schedule 'B')]

(1) Land & Building: Land Measuring 008 00K 13L covered by Dag No.2079,2080 PP No.-989 situated at Court Road Golaghat, Golaghat Town, Mouza- Moukhowa, Dist- Golaghat, Assam. Standing in the name of Sri Porag Jyoti Saikia and Rajib Borthakur.

Boundary: North: Land of Sandha Ghosh, South: Land of Dul Baruah, East: Land of Dulu Baruah, West: Road.

(II) Land& Building: Land Measuring 00B 1K 14L with a 2 storied RCC building covered by Dag No.590 PP No.-171 situated at kumar gaon village, Mouza- Dergaon, Dist- Golaghat, pin-785614 standing in the name of Sri Rajib Borthakur.

Boundary: North: Gunahari chuk path, South: Deboram BB Girls High School, East: Land of Lilly Goswami, West: Land of Moni Borthakur."

7. It is contended that after receiving the notice dated 05.05.2023 the petitioner was astonished to notice the nature of security and the date of execution etc. tabulated in the Schedule-B. The petitioner on 07.09.2023 submitted an application before the Chief Manager, SBI Golaghat Branch to furnish the documents mentioned in the notice dated 05.05.2023 and the Bank

accordingly furnished the documents as requested by the petitioner, but the Bank did not provide the documents to the petitioner which is mentioned as SME-5 in the Schedule-B of the notice dated 05.05.2023.

8. It is averred that on 04.09.2023 possession notice was issued by the Chief Manager, SBI u/s 13(4) of the SARFAESI Act read with Rule 8 of the rules relating to the immovable property described as a parcel of land admeasuring 0 B 1 K 14 L along with a 2 storied RCC building appertaining to Dag No. 590 of Patta No. 171 situated at Komargaon, Dergaon. However, the CC accounts of M/s. Heron Tractors were not enclosed in the notice.

9. The petitioner has vehemently denied that he affixed his signature on SME-1 where the property of the petitioner and the respondent No. 5 Parag Jyoti Saikia has been shown as "Name of the security holder Porag Jyoit Saikia and Rajib Borthakur – land admeasuring 00 B 00 K 13 L appertaining to Dag No. 2079, 2080 of PP No. 989 at Court Road Golaghat, Golaghat Town." It is admitted by the petitioner that at the time of correction of CC Account of 'M/s. Heron Tractors' the joint property of respondent No. 5 was created as security of fund based working capital (Cash Credit) and the said document has been surpassed by the Bank and the same is in the custody of the SBI, Golaghat Branch. The petitioner has not created the mortgage No. 2 or gave his signature or signed any document for creation of Mortgage No. 2 and the property which has been shown in the notice dated 05.05.2023 and 04.09.2023 has been falsely shown by the official respondent in collusion with the respondent No. 5. The document SME -1 is also not duly notarized by the Notary.

10. The petitioner has also denied that he gave his signature on the Guarantee Agreement, SME-3 dated 31.03.2022. The CC account of M/s Heron Tractors was also not mentioned in the document. The petitioner has

vehemently denied that he affixed his signature on the document SME-4 and thus the CC account of M/s Heron Tractors was also not mentioned in the document.

11. It is contended by the petitioner that the SBI, Golaghat Branch willfully did not provide the petitioner the document relating to creation of mortgage property-1/SME-5 mentioned in the notice dated 05.05.2023. The petitioner has denied that he gave his signature on the letter of confirmation dated 18.03.2023, but such a letter of confirmation has been forwarded to the Branch Manager of the SBI, Golaghat Branch by the official respondents in collusion with respondent No. 5. The document SME-6 is also not duly notarized.

12. The petitioner has emphasized that he did not visit the SBI, Pulibor Branch, Golaghat for extension of mortgage of property -2/SME-7. The petitioner has admitted that he and his wife Smt. Tinamoni Gogoi had obtained a loan of Rs. 20,72,570/- against the mortgage of rented property of 0 B 1 K 14 L of land appertaining to Dag No. 1129 and PP No. 178 situated at Komargaon, Dergaon. The CC Account of M/s Heron Tractors is also not mentioned in the said document - SME-7. The petitioner has also denied of having affixed his signature on the letter of confirmation for extension, SME-8 dated 06.04.2022.

13. The sum and substance of the contentions of the petitioner is that the documents referred to as SME-1, SME-3, SME-4, SME-6, SME-7 and SME-8 provided by the SBI, Golaghat Branch in response to the application of the petitioner dated 07.09.2023 are false and fabricated documents which have been manufactured by the Bank officials in collusion with respondent No. 5.

14. It is alleged that the respondent No. 5 has been running a similar business under the name and style of P.G. Motors in the same premise of M/s. Heron

Tractors for the last few months without cancellation of the partnership business of M/s Heron Tractors between the petitioner and respondent No. 5. The respondent No. 5 siphoned off a huge amount of money from the account of M/s Heron Tractors into the accounts of other firms and establishment belonging to respondent No. 5 with a capital turnover estimated to be Rs. 4 crores. Therefore, the petitioner tried to raise this dispute before an arbitrator as per clause 16 of their partnership deed dated 23.03.2015 which also includes an arbitration clause.

15. The petitioner has contended that without mentioning the name of M/s Heron Tractors as the borrower in Part-II of Schedule-C of the notice dated 05.05.2023 the petitioner's name has been unlawfully mentioned as the borrower despite the fact that he did not create any mortgage against any property for CC loan of M/s Heron Tractors and now his property is presently under equitable mortgage. The petitioner has admitted that his property is at present under equitable mortgage since 2018 against the home loan obtained from the SBI, Pulibor Branch, Golaghat.

16. It is averred that though the possession notice dated 04.09.2023 has been issued and possession of property is shown by the SBI, Golaghat Branch, the property is still in the possession and custody of the petitioner. The petitioner has submitted that the notice to the Borrower dated 05.05.2023 and the possession notice dated 04.09.2023 are unlawful and the same has been served with vested interest and malafide intent and therefore are not maintainable in law and are liable to be set aside and quashed. As the petitioner has no alternative or efficacious remedy, the petitioner has prayed to set aside and quash the notices dated 05.05.2023 and 04.09.2023.

17. Heard Mr. T. Das, learned counsel for the petitioner.

18. The partnership deed, more particularly Annexure-1 of the petition has an arbitration clause at Clause-16. The notice to borrower dated 05.05.2023 is marked Annexure-2 and the notice of possession dated 04.09.2023 is marked as Annexure-10. The petitioner has vehemently denied his signatures on SME-01, SME-03, SME-04, SME-06, SME-07 marked as Annexures – 4, 5, 6 and 7 of the writ petition, which clearly indicates that the petitioner has denied his signatures on all the documents which includes letter of arrangement, guarantee agreement, creation of mortgage of property – 2 and confirmation for extension of mortgage etc. It is needless to say that the afore-mentioned documents were allegedly submitted by the petitioner to obtain loan from the SBI, Golaghat Branch. The petitioner instead of resorting to Section 11 of the SARFAESI Act preferred this writ petition which is not maintainable. It is pertinent to reiterate that Clause-16 of the partnership deed (Annexure-1) includes an arbitration clause.

19. This Court is hesitant to delve into the intricacies of the evidence relating to forgery of signatures as alleged by the petitioner. The petitioner is entitled to relief if any fraud has been committed to his detriment, but instead to seeking relief in the proper forum, the petitioner has preferred this writ petition. The petitioner has failed to affirm if any of his legally enforceable right has been infringed. The petitioner's grievances can be looked into and considered by the proper forum within the mandate of the statute. Notices have been issued against the petitioner u/s 13(2) and 13(4) of the SARFAESI Act but instead of seeking relief under the Act, the petitioner has filed an application u/s 226 of the Constitution of India, which is not tenable in law.

20. In the wake of the foregoing discussions it is thereby held that the petition is devoid of merits and is hereby dismissed.

21. No order as to costs.

JUDGE

CHIEF JUSTICE

sds