

GAHC010223242023



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

Case No. : WP(C)/5952/2023

KAMAL TALUKDAR
S/O- LATE LALIT TALUKDAR,
R/O- SWADESH NAGAR,
P.O.- KHANAPARA, GUWAHATI- 781022,
DIST- KAMRUP(M), ASSAM.

VERSUS

ASSAM GRAMIN VIKASH BANK AND 3 ORS.
HEAD OFFICE- BHANGAGARH,
GUWAHATI- 781005, DIST.- KAMRUP(M),
ASSAM, REPRESENTED BY ITS CHAIRMAN.

2:THE GENERAL MANAGER
ASSAM GRAMIN VIKASH BANK
HEAD OFFICE- BHANGAGARH

GUWAHATI- 781005
DIST.- KAMRUP(M)
ASSAM.

3:THE REGIONAL MANAGER/ AUTHORIZED OFFICER
ASSAM GRAMIN VIKASH BANK
REGIONAL OFFICE
GUWAHATI, RAJGARH ROAD
CHANDMARI, GUWAHATI- 781003
DISTRICT- KAMRUP(M)
ASSAM.

4:THE BRANCH MANAGER
ASSAM GRAMIN VIKASH BANK
GARCHUK BRANCH
GUWAHATI- 781003

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : SC, A G V B

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 11-10-2023

Heard the learned counsel appearing for the parties.

The instant writ petition under Article 226 of the Constitution of India has been preferred by the petitioner herein praying for the following relief:

“Under the afore stated premises, it is humbly prayed that Your Lordship may be graciously pleased to admit this Writ Petition, call for the records and issue Notice/Rule calling upon the Respondents to show cause as to why, a Writ in the nature of Mandamus and/or Certiorari and/or any other Writ, direction or Order of the like nature be not issued setting aside the impugned back dated Sale Notice dated 27.06.2023 issued by the Respondent Bank in respect of the residential property of the Petitioner in purported exercise of powers conferred under SARFAESI Act, 2002 towards recovery of the outstanding loan amount in respect of the loan account in the name of firm of Ms Bhagyashree Group and why, the representation dated 06.09.2023 preferred by the Petitioner before the Respondent Bank for settlement of the loan account shall not be considered as per the RBI Guidelines and Banking norms and on hearing the cause or causes as may be shown, to make the rule absolute and/or to pass such further other order as your Lordship may deem fit and proper.

And

Pending disposal of the instant Writ Petition, Your Lordship may be pleased to stay the operation of the impugned back dated Sale Notice dated 27.06.2023 in respect of the residential property of the Petitioner under purported exercise of the powers conferred under the SARFAESI Act, 2002 towards recovery of the outstanding loan amount in the loan account of M/s Bhagyashree Group.”

The writ petitioner, as debtor, had availed a loan facility from the respondent Assam Gramin Vikash Bank. Assets were mortgaged for securing the loan. However, the petitioner admittedly failed to clear the bank's dues and fell

into default, whereupon the respondent bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in the year 2017. Possession Notice in respect of the secured assets was issued in the year 2018. The petitioner preferred a Writ Petition No. 3306/2018 in this Court, wherein opportunity was given to the petitioner by the Court to deposit a sum of Rs. 5 Lakhs to the bank and to submit a statement of repayment schedule for the remaining dues of the bank. However, inspite of the opportunity so granted, the petitioner did not deposit the amount of Rs. 5 Lakhs. Thereafter the said writ petition came to be taken up by the Division Bench on 27.02.2020, on which date the Court was informed that a sum of Rs. 73,35,200/- was due towards the respondent bank. The Division Bench observed that the writ petition was filed in May, 2018, however the case was adjourned on one pretext or the other and though a number of opportunities were given, the petitioner failed to come up with a constructive scheme to repay the outstanding dues. The petitioner's counsel made a statement that they were not in a position to offer an acceptable agreement, upon which the writ petition was disposed of as not pressed.

Thereafter, another writ petition, being WP(C) 3984/2020, came to be filed by the petitioner, which was also disposed of vide order dated 11.02.2021 taking note of the fact that statutory remedy of appeal was available. The limitation period was condoned and till consideration of the appeal to be filed by the debtors before the Debts Recovery Tribunal (DRT) and the bank was restrained from taking coercive measures. Pursuant thereto, the petitioner approached the DRT, wherein an interim direction was passed vide order dated 23.02.2021 requiring the debtors to deposit 30% of the total outstanding dues within eight

weeks with the stipulation that the interim stay would stand vacated if the amount so directed is not deposited.

There is no dispute that 30% of the total outstanding dues towards the loan has not been deposited. Now the instant writ petition has been preferred on the premise that the petitioner is willing and ready to clear the entire loan amount. It is further projected that the petitioner's son, Himangshu Talukdar, expired on 31.01.2021 and, thus, the petitioner was genuinely prevented from making payment of the amount due to the respondent bank.

While taking up the writ petition, the petitioner's counsel was asked to present credible proof in the form of a Demand Draft to satisfy the Court that the petitioner is *bona fide* desirous of clearing the outstanding amount due to the respondent bank. However, today, when the matter was taken up, the petitioner's counsel expressed his inability to submit any proposal for repayment of the outstanding dues of the bank as no instruction has been provided to him in this regard.

In this background, the writ petition fails and is dismissed as being not maintainable as well as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant