

GAHC010233082015



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

Case No. : WP(C)/6654/2015

MD. ABDUL HANNAN
S/O- LT. HAJI ABDUL HOQUE, PROPRIETOR OF M/S A.H. RICE MILL
SITUATED AT SIBPUR, P.O.- MURAJHAR, NAGAON, ASSAM, R/O VILL.-
SIBPUR, MOUZA- KAPASHBARI, P.O. and P.S.- MORAJHAR, DIST.- NAGAON,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
FINANCE DEPTT., DISPUR, GHY- 6.

2:THE ASSAM FINANCIAL CORPORATION
A CORPORATION ESTD. UNDER THE STATE FINANCIAL CORPORATIONS
ACT
1951
HAVING ITS HEAD OFFICE AT VITTIYA BHAWAN
M.D. SHAH ROAD
PALTAN BAZAR
GHY- 8.

3:THE MANAGING DIRECTOR
ASSAM FINANCIAL CORPORATION
HEAD OFFICE AT VITTIYA BHAWAN
M.D. SHAH ROAD
PALTAN BAZAR
GHY- 8.

4:THE REGIONAL MANAGER
ASSAM FINANCIAL CORPORATION
TEZPUR
ASSAM.

5:THE BRANCH MANAGER
ASSAM FINANCIAL CORPORATION
NAGAON BRANCH
CHRISTIANPATTY
NAGAON
ASSAM.

6:THE DIRECTOR OF INDUSTRIES
INDUSTRIAL ESTATE
BAMUNIMAIDAN
GHY- 21.

7:THE GENERAL MANAGER
DIST. INDUSTRIES CENTRE
NAGAON
ASSAM

For the Petitioner(s) : Ms. D. D. Basumatary, Advocate

For the Respondent(s) : Mr. S. Bora, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 18-09-2023

1. The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondent Authorities not to take over the possession of the land, factory and collateral security of the Petitioner and not to proceed to transfer by way of lease or sale of the assets mortgaged with it by Public Auction for settlement of the dues in respect to the Petitioner's loan account without complying with the directions passed by this Court in its order dated 11.11.2014 passed in WP(C) No.5595/2007.

2. It reveals from the records that this Court vide an order dated 11.11.2014

in WP(C) No.5595/2007 disposed of the writ petition thereby permitting the Petitioner to apply to the AFC i.e. the Assam Financial Corporation under the NPA loan settlement policy and the competent authority of the Assam Financial Corporation was directed to consider the Petitioner's representation in accordance with their notified scheme. The Petitioner was also directed to furnish the copy of the said order dated 11.11.2014 along with their representation within 2 (two) weeks from the date of the said order and the competent authority of the AFC was directed to consider the representation and pass a speaking order within 6 (six) weeks thereafter. It was also directed that the impugned recovery proceedings under the State Financial Corporation Act will abide by the decision of the competent authority in terms with the said order.

3. It further reveals that the Petitioner had submitted a representation in pursuance to the order passed by this Court. Thereupon, vide an order dated 29.12.2014, the Branch Manager of the Assam Financial Corporation directed the Petitioner to pay Rs.4,50,000/- to settle the loan account and requested the Petitioner to submit the proposal within 15 days from the date of receipt of the said letter to settle his loan account as per the said package, subject to the approval of the Board of Corporation. The Petitioner thereupon on 08.01.2015 submitted a representation before the Chairman of the Assam Financial Corporation that the subsidy amount and the one time settlement payment of Rs.2,03,660/- and Rs.55,000/- lying with the Corporation be adjusted against the loan amount pending, if any as per the NPA Settlement Policy, 2013. Thereupon, the Petitioner has approached this Court by filing the instant writ petition.

4. It reveals from the records that this Court vide an order dated 02.11.2015 issued notice and further in the interim directed the Assam Financial Corporation not to take/initiate any action against the Petitioner by way of taking over possession of the land and the factory of the Petitioner. At the same time, it was also made clear that the said restrain order shall be subject to the Petitioner making a payment of Rs.2,00,000/- to the Assam financial Corporation within 4 (four) weeks from that date.

5. It further reveals that pursuant to that notice being issued, an affidavit-in-opposition was filed by the Respondent Nos. 2, 3, 4 and 5 wherein it has been mentioned that pursuant to the order dated 11.11.2014, the Petitioner submitted a representation dated 28.11.2014 to the Chairman of the Corporation enclosing the copy of the order dated 11.11.2014. Thereupon, the Respondent Corporation vide the communication dated 29.12.2014 intimated the Petitioner that as per the NPA Settlement Policy, 2013, the Petitioner was liable to pay a sum of Rs.4,50,000/- only to settle the loan account and the Petitioner was requested to submit his proposal within 15 days from the date of receipt of the said letter to settle his loan account as per the package, subject to approval of the Board. It was further mentioned that as no action was taken by the Petitioner till August, 2015. Under such circumstances, the Respondent Corporation decided to take over mortgaged property and accordingly the Circle Officer, Doboka Revenue Circle, Nagaon to instruct the concerned Land Revenue official to record the mortgaged property and encumbered in the Land Records in favour of the Assam Financial Corporation to prevent transfer of the mortgaged property in future. However, on coming to know about the letter dated 04.07.2015, the Petitioner again filed the instant writ petition before this Court on 15.10.2015 and this Court passed an order

dated 02.11.2015 directing the Petitioner to make payment of a sum of Rs.2,00,000/- to the Respondent Corporation within a period of 4 (four) weeks. It is also mentioned in the said affidavit-in-opposition that the Petitioner did not take any action as a result of which the Respondent Corporation issued a letter on 08.02.2016 requesting the Petitioner to carry out the order of this Court immediately. But no action was taken by the Petitioner for payment of the amount of Rs.2,00,000/- as ordered by this Court. Finding no other alternative, the Respondent Corporation again vide a letter dated 24.02.2016 requested the Petitioner to pay the amount as ordered by this Court. On 02.03.2016, the Petitioner paid an amount of Rs.2,00,000/- as per the order passed by this Court dated 02.11.2015. The Respondent Corporation thereupon vide a letter dated 14.03.2016 formally intimated the Branch Manager of the Corporation that the Respondent Corporation has credited the said amount of Rs.2,00,000/- in the Branch Account of Nagaon Branch of Assam Financial Corporation. In Paragraph No.24 of the said affidavit-in-opposition, it was mentioned that the Petitioner paid an amount of Rs.2,00,000/- and was yet to pay a sum of Rs.2,50,000/-. The Petitioner had also not forwarded his proposal under the NPA settlement policy to the Respondent Corporation as a result of which the Respondent Corporation could not settle the loan account of the Petitioner.

6. From the above materials on record, it therefore transpires that the Assam Financial Corporation had directed the Petitioner as far back as on 29.12.2014 to pay an amount of Rs.4,50,000/-. The Petitioner pursuant thereto vide a communication dated 08.01.2015 requested Respondent Authorities to adjust the amount of Rs.2,03,660/- and Rs.55,000/- lying with the Corporation. However, the said request so made by the Petitioner on 08.01.2015 was not

taken into account for which the Petitioner has approached this Court. This Court while issuing notice on 02.11.2015 and passing an interim order directing the Respondent Corporation not to take/initiate any action against the Petitioner by way of taking over the possession of the land and the factory of the Petitioner made it clear that the restrain order shall be subject to the Petitioner making a payment of Rs.2,00,000/- to the Assam Financial Corporation within a period of 4 (four) weeks. It further reveals from the records that the Petitioner did not pay the amount of Rs.2,00,000/- in terms with the order dated 02.11.2015 but had paid the said amount of Rs.2,00,000/- on 02.03.2016 which can be seen from Annexure-III to the Affidavit-in-Opposition. The question therefore arises herein is as to whether the Petitioner would be entitled for adjustment of the amount of Rs.2,03,660/- and Rs.55,000/- which the Petitioner claims that the said amounts are lying with the Respondent Corporation or the Petitioner is not entitled to the adjustment as sought for vide the communication dated 08.01.2015. This aspect of the matter cannot be adjudicated in a proceedings under Article 226 of the Constitution more so, when there are no sufficient pleadings and materials for this Court to decide whether or not the Petitioner would be entitled to adjustment as prayed for in the communication dated 08.01.2015.

7. Under such circumstances, this Court therefore disposes of the instant writ petition directing the Respondent Corporation to decide as to whether the Petitioner herein would be entitled to any adjustment of the amount of Rs.2,03,660/- and Rs.55,000/- which the Petitioner claims that the said amounts are lying with the Respondent Corporation. The Respondent Corporation shall duly consider the same on the basis of its extant laws and policies and pass an order informing the Petitioner in that regard.

8. It is made clear that till such order is passed by the Respondent Authorities, the Respondent Authorities shall not take any coercive action against the Petitioner.

9. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant