

GAHC010257222022



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

Case No. : WP(C)/123/2023

MONSHER ALI AND ANR
S/O ABSUR ALI P.O MANDAKATA KAMRUP RURAL ASSAM 781121

2: NIKUMONI AHMED
D/O NURUDDIN AHMED VILL MALIBARI P.O HADHA P.S. BAIHATA
CHARIALI DIST. KAMRUP PIN-78112

VERSUS

THE REGIONAL MANAGER, SBI, DISPUR AND 3 ORS..
STATE BANK OF INDIA DISPUR GUWAHATI-6 DIST. KAMRUP (M)

2: THE ASSISTANT GENERAL MANAGER
STATE BANK OF INDIA RBO GUWAHATI RURAL

3: THE BRANCH MANAGER
STATE BANK OF INDIA BAIHATA CHARIALI BRANCH

4: THE MANAGER
STATE BANK OF INDIA RBO ITANAGA

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 09-01-2023

Heard Mr. B.K. Das, learned counsel for the petitioner.

2. The case projected by the petitioners is that the petitioner no.2 had availed a tractor loan from the Baihata Chariali Branch of SBI against which the petitioner no. 1 stood as guarantor. For reasons assigned in the writ petition, it is submitted by the learned counsel for the petitioners that the tractor was replaced in the year 2022 and thereafter, the petitioner no. 1 started to pay the installment for the said vehicle. The petitioners are aggrieved by the bank's notice of demand dated 26.09.2022, informing the petitioners that the loan had become NPA since 10.08.2019 and the loan transaction was declared by the bank authorities to be a fraud. It is projected that the salary of the petitioner no.1 has been attached without any prior notice to the petitioners.

3. Therefore, the present writ petition has been filed under Article 226 of the Constitution of India for direction upon the respondent authority not to attach the salary of the petitioner no.1 and to quash demand notice dated 26.09.2022 and to permit the petitioner no.1 to withdraw his salary.

4. The learned counsel for the petitioner has submitted that in the impugned demand notice dated 26.09.2022, the outstanding amount has not been disclosed. It is also submitted that in an internal bank correspondence dated 04.04.2022 (annexure-7), it is mentioned that the petitioner no. 1 had not signed the arrangement letter dated 11.08.2017 and that there were lapses on part of the bank to grant loan to the petitioner no. 2.

5. Essentially the transaction between the petitioner and the respondent bank is on account of guarantee given by the petitioner no. 1 and the loan availed by the petitioner no. 2 from the State Bank of India for purchasing a tractor. Therefore, the quantum of liability or the correctness of the transaction of the borrower with the bank is essentially a dispute of civil nature. In this writ petition neither the loan agreement nor the deed of guarantee has been annexed. It is apparent from the contents of notice dated 26.09.2022 that the guarantee deed was annexed to the demand notice (annexure-8). In the said demand notice dated 26.09.2022, it is mentioned that the said notice was a "demand notice-II" by which it is presumed that they must have been a previous demand notice issued, but the same is also withheld from the Court. Moreover, from the contents of internal communication of bank dated 04.04.2022, it appears that the loan sanctioned by the bank is to the extent of Rs. 6,22,332.16. Moreover, as the bank accounts have already been computerized, the outstanding loan amount could be found out by the petitioner no. 1 from the petitioner no. 2, if he does not intend to visit the bank to get information of outstanding loan amount with interest.

6. Moreover, in this writ petition no statement has been made that the petitioner has never signed any authorization letter to enable the respondent bank to made recovery from the salary account of the petitioner no.1.

7. Therefore, in the opinion of the Court, the dispute between parties is essentially in civil nature. A highly disputed question of fact will have to be adjudicated if this writ petition is admitted for hearing. Therefore, the Court is of

the considered opinion that as no legal or fundamental rights of the petitioners have been violated and/ or infringed, this writ petition is held to be not maintainable as other legal forum is available to the petitioners to seek appropriate remedy.

8. Accordingly, having held that this writ petition is not maintainable, the same is dismissed at the motion stage without issuance of notice on the respondents.

9. However, the dismissal of the writ petition shall not be a bar for the petitioners to approach the Baihata Chariali Branch of SBI and to submit a presentation for consideration, and/ or to approach the appropriate Court of law.

10. The Registry shall send a copy of this order to the respondent no.1.

JUDGE

Comparing Assistant