

GAHC010259342023



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

Case No. : WP(C)/6630/2023

M/S ASSAM INDUSTRY AND 2 ORS
A PROPRIETORSHIP FIRM SITUATED AT GEETA NAGAR MTR ROAD
GUWAHATI 781024 REP BY ITS PROPRIETOR SMTI HIMA DAS W/O TILAK
DAS R/O FLAT NO. 7B ASHI PRADISE HATIGAON CHARIAL GUWAHATI
ASSAM PIN 781021

2: HIMA DAS
PROPRIETOR OF M/S ASAM INDUSTRY W/O TILAK DAS R/O FLAT NO. 7B
ASHI PRADISE HATIGAON CHARIAL GUWAHATI ASSAM PIN 781021

3: BINOD SARMAH
S/O LT. BASUDEV SARMAH R/O NANDAN PATH AMGAON BONDA
NARENGI GUWAHATI 78102

VERSUS

UCO BANK AND 3 ORS
HAVING HEAD OFFICE AT 10 BTM SARANI KOLKATA WEST BENGAL PIN
700001 REP BY ITS CHAIRMAN

2:THE CHIEF MANAGER
UCO BANK MALIGAON BRANCH MALIGAON DIST. KAMRUP M ASSAM
PIN 781012

3:THE AUTHORISED OFFICER
UCO BANK MALIGAON BRANCH MALIGAON DIST. KAMRUP M ASSAM
PIN 781012

4:THE DISTRICT MAGISTRATE(MAGISTERIAL BRANCH)
KAMRUP METROPOLITAN DIST. GUWAHATI ASSA

Advocate for the Petitioner : MR. D CHOUDHURY

Advocate for the Respondent : SC. UCO BANK

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR
HON'BLE MRS. JUSTICE MALASRI NANDI

29.11.2023

ORDER

[Lanusungkum Jamir, CJ (Acting)]

Heard Mr. T. Chakraborty, learned counsel for the petitioners. Also heard Mr. S. Chamaria, learned counsel for the respondents No.1 to 3 (UCO Bank) and Ms. R.B. Borah, learned Government Advocate, Assam for respondent No.4.

On 17.11.2023, when this matter was taken up in the motion stage, this Court passed the following order:-

“The petitioner’s firm took Cash Credit Loan of Rs.70 Lakhs, Term Loan of Rs.30 Lakhs and FITL Loan for an amount of Rs.11,38,583/-. Though the petitioner’s firm was paying interest to the Bank, however, due to Covid-19 and some misfortunes that had happened in the family, the petitioner’s firm could not pay the interest and, accordingly, the three loans were declared as NPA on 01.09.2022. Thereafter, the District Magistrate, Kamrup (M) by an order dated 28.04.2023, in exercise of powers conferred under Section 14 of SARFAESI Act, 2002, authorized the Executive Magistrate, Kamrup (Metro) to take possession of the secured assets/mortgaged properties. The UCO Bank, Maligaon Branch through their Authorized Officer also issued vacation notice on 09.11.2023 to the petitioner’s firm.

Being aggrieved, the petitioner is before this Court impugning the order dated 28.04.2023 and the vacation notice dated 09.11.2023.

At this stage, learned counsel for the petitioner, on instructions, submits that the petitioner’s firm is willing to pay Rs.5 Lakhs to the Bank on

18.11.2023 and the remaining amount of the FITL will be cleared on or before 20.11.2023. Further assurance is made before this Court that the petitioner's firm will clear the Term Loan on or before 15.12.2023 and the Cash Credit will also be paid to the Bank in two installments thereafter.

Recording the submissions made by the learned counsel for the petitioner, we, accordingly, direct that the petitioner shall pay Rs. 5 Lakhs to the UCO Bank on 18.11.2023 and the remaining FITL amount on or before 20.11.2023. We further direct that the petitioner's firm shall clear the Term Loan to the UCO Bank on or before 15.12.2023.

In that view of the matter, the impugned vacation notice dated 09.11.2023 issued by the Authorised Officer, UCO Bank, Maligaon Branch shall remain suspended till the next returnable date.

If the petitioner defaults in making the payment as undertaken before this Court, this Court shall pass appropriate order for vacation of the interim order.

List the matter again on 18.12.2023."

Today when the matter is taken up, Mr. Chamaria, learned counsel for the respondent-Bank submits that the petitioners have defaulted in making the payments as assured before this Court on 17.11.2023.

Mr. Chakraborty, learned counsel for the petitioners, submits that the petitioners could not make the payments as assured before this Court as they could not arrange the said amount within the specified period of time.

This Court passed the order dated 17.11.2023 on the assurance of the petitioners through their counsel that they would be paying an amount of Rs.5 Lakhs to the Bank on 15.11.2023 and the remaining amount of FITL on or before 20.11.2023. The petitioner's firm also assured this Court that the Term Loan will be paid on or before 15.12.2023. It was on the basis of the assurance given by the petitioners that the order dated 17.11.2023 was passed.

We are appalled by the attitude of the petitioners in misleading this Court by giving false assurances that specific amounts would be paid on specific dates and that they have failed to do the same only on the ground that they could not arrange the amounts as assured before this Court.

In that view of the matter, as the petitioners have defaulted in their assurance given before this Court, we dismiss the present writ petition.

Interim order, passed earlier, stands vacated.

The respondent No.4 is directed to do the needful in accordance with law against the petitioners.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant