

GAHC010320092019



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

Case No. : CRP(IO)/20/2020

HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED (HDFC) AND ANR.

A FINANCIAL ORGANISATION/BANK, HAVING ITS REGISTERED OFFICE AT RAMON HOUSE, H.T. PAREKH MARG, 169, BACKBAY RECLAMATION, CHURCHGATE, MUMBAI-400020 AND HAVING ITS REGIONAL OFFICE AT SWAGOTA ENIVISION, 1ST FLOOR, KHANAPARA, SIX MILE, G.S. ROAD, P.O. KHANAPARA, GUWAHATI-781022, DIST. KAMRUP (M), ASSAM AND IT IS REP. BY ITS BRANCH MANAGER, KHANAPARA BRANCH

2: THE BRANCH MANAGER CUM AUTHORISED OFFICER
HDFC LTD.
SWAGOTA ENIVISION
1ST FLOOR
KHANAPARA
SIX MILE
G.S. ROAD
P.O. KHANAPARA
GUWAHATI-781022
DIST. KAMRUP (M)
ASSA

VERSUS

M/S SAUMAR ASSOCIATES AND 3 ORS.
A PARTNERSHIP FIRM HAVING ITS OFFICE AT AMTAL, CHASAL, SIXMILE-NARENGI VIP ROAD, P.O. KHANAPARA, P.S DISPUR, GUWAHATI-22, DIST. KAMRUP (M), ASSAM, REP. BY ITS AUTHORISED PARTNER SRI BABUL KAKATI, PHONE NO. 9101110664

2: BABUL KAKATI
S/O DHANESWAR KAKATI
R/O JAPORIGOG TINIALI
HOUSE NO. 3
P.O. JAPORIGOG

P.S. DISPUR
GUWAHATI-05
DIST. KAMRUP (M)
ASSAM
PHONE NO. 9101110664

3:SIMANTA SAIKIA
S/O SRI KESHAB CH. SAIKIA
R/O HOUSE NO. 414
VILL. GORAIMARI
HALESWAR NEAR
HALESWAR TEMPLE
P.O. HALESWAR
TEZPUR
ASSAM
PIN-784104

4:MEENA SAIKIA
W/O SRI SIMANTA SAIKIA
R/O HOUSE NO. 414
VILL. GORAIMARI
HALESWAR NEAR
HALESWAR TEMPLE
P.O. HALESWAR
TEZPUR
ASSAM
PIN-78410

Advocate for the Petitioner : Mukesh Sharma

Advocate for the Respondent : MR. L K BORAH

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. I. Chowdhury,
Sr. Advocate.
Mr. M. Sharma,
Advocate.

For the Respondents : Mr. L.K. Borah,
Advocate.

Date of Hearing : 11.05.2023.

Date of Judgment : 15.05.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. I. Chowdhury, learned senior counsel assisted by Mr. M. Sharma, learned counsel appearing for the petitioner as well as Mr. L. K. Borah, learned counsel representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 23.10.2019 passed by the learned Civil Judge No.1, Guwahati in Title Suit No.152/2019.

3. The respondents Srimanta Saikia and his wife Mrs. Meena Saikia jointly had an agreement with the respondent M/S. Saumar Associates for purchasing a flat. The husband and wife respondents paid an advance of ₹17,000,00/- to M/S. Saumar Associates as booking amount. Thereafter, the said respondents had applied for a loan to the present petitioner Bank for purchasing the flat. Accordingly, the petitioner Bank sanctioned a housing loan of ₹67,67,362/- and out of that amount, ₹58,91,000/- was disbursed in favour of M/S. Saumar Associates.

4. Thereafter, the husband and wife respondents defaulted in repayment of loan. Therefore, the loan account became NPA. The petitioner Bank issued a notice on 13.11.2015 under Section 13(2) of the SARFAESI Act of 2002 asking the husband and wife respondents to repay the outstanding amount within 60 days next. Finally, when the husband and wife respondents failed to answer to the notice, the petitioner Bank took over possession of the flat after compliance of the provisions of the

SARFAESI Act, 2002.

5. The husband and wife respondents approached the Debts Recovery Tribunal, Guwahati challenging the acts of the petitioner Bank. The Debts Recovery Tribunal dismissed the claim of the husband and wife respondents.

6. Thereafter, M/S. Saumar Associates approached the Debts Recovery Tribunal, Guwahati. Their petition was also dismissed.

7. Later on, M/S. Saumar Associates, filed a suit being Title Suit No.152/2019 against the husband and wife respondents and the petitioner Bank. The primary contention of M/S. Saumar Associates is that they are still entitled to recover ₹30,33,012/- from the husband and wife respondents.

8. This time, the petitioner Bank filed an application before the Trial Court under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint on the ground that under Section 34 of the SARFAESI Act, the civil court has no jurisdiction to entertain the suit.

9. The learned Trial Court held that M/S. Saumar Associates is not bound by whatever happened between the husband and wife respondents and the petitioner Bank under the provisions of SARFAESI Act. Therefore, the petition under Order 7 Rule 11 of the Code of Civil Procedure was dismissed.

10. I have given my anxious considerations to the submissions made by the learned counsels of both sides.

11. The power under Article 227 of the Constitution of India is supervisory

in nature. From this angle, I find that the learned Trial Court erroneously oriented itself and passed the impugned order.

12. The claim of M/S. Saumar Associates has already been dealt with by the Debts Recovery Tribunal, Guwahati. To that effect, Mr. Chowdhury has submitted that the present suit is also barred by the principles of *res judicata*.

13. It appears that M/S. Saumar Associates is interested in recovery of ₹30,33,012/- from the husband and wife respondents. Mr. Borah submits that this is the primary claim of M/S. Saumar Associates against the husband and wife respondents.

14. On the basis of the submissions made by the learned counsels, it is clear that M/S. Saumar Associates could have resorted to other legal measures for recovery of the said amount from the husband and wife respondents.

15. By approaching the Debts Recovery Tribunal, Guwahati, M/S. Saumar Associates has entangled itself with whatever is happening between husband and wife respondents and petitioner Bank.

16. Under the aforesaid circumstances, this Court has reason to reiterate that the learned Trial Court has erroneously oriented itself with the prayer under Order 7 Rule 11 of the Civil Procedure Code filed by the petitioner Bank. Therefore, the impugned order dated 23.10.2019 passed by the learned Civil Judge No.1, Guwahati in Title Suit No.152/2019 is bad in law and is set aside.

17. The learned Trial Court is directed to decide the prayer under Order

7 Rule 11 of the Code of Civil Procedure filed by the petitioner Bank afresh after hearing both sides.

The Civil Revision Petition stands disposed of accordingly.

JUDGE

Comparing Assistant