

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.37 of 2023

1. Smt. Purabi Debbarma Ghosh, Wife of Late Biswajit Ghosh, (Original Applicant in S.A. No.29 of 2019) Vill & P.O.- Salema, Kamalpur, Dist: Dhalai, Pin-799278

2. Shri Gourab Ghosh, Son of Late Biswajit Ghosh, Vill & P.O.- Salema, Kamalpur, Dist: Dhalai, Pin-799278

3. Shri Sourabh Ghosh, Son of Late Biswajit Ghosh, Vill & P.O.- Salema Kamalpur, Dist: Dhalai, Pin-799278

.....Petitioner(s);

Versus

1. Tripura Gramin Bank, Head office- Abhoynagar, Agartala West Tripura, Pin-799005 (a joint undertaking of Govt. of India, United Bank of India and Govt. of Tripura)

2. Authorized Officer, Tripura Gramin Bank, Abhoynagar, Agartala, West Tripura-799005

3. The Branch Manager Tripura Gramin Bank (Salema Branch) Dhalai, Tripura, Pin-799278

4. Sri Mantosh Deb, Son of Late Nripendra Kumar Deb, Resident of Vill & P.O., P.S- Salema, District- Dhalai Tripura, Pin-799278

.....Respondent(s)

For Petitioner(s) : Ms. K. Samajpaty, Advocate,
Mr. Tanmay Debbarma, Advocate,
Mr. Prabir Tripura, Advocate.

For Respondent(s) : Mr. D.R. Chowdhury, Sr. Advocate,
Mr. P. Saha, Advocate,
Mr. S. Sarkar, Advocate,
Mr. D. Deb, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing & Judgment: **16.02.2024**

Whether Fit for Reporting: **NO**

JUDGMENT & ORDER (ORAL)

Heard Ms. K. Samajpaty, learned counsel for the petitioners and Mr. P. Saha, learned counsel for the respondents No.1 to 3-Bank. Also heard Mr. D.R. Chowdhury, learned senior counsel for the respondent No. 4.

2. Under Article 227 of the Constitution of India, the legal heirs of the original borrower seek to challenge the order dated 21.06.2023 passed by learned Debts Recovery Appellate Tribunal (DRAT), Kolkata in Appeal No.37 of 2021. Appeal No.37 of 2021 arose out of a judgment and order dated 21.06.2019 passed by learned Debts Recovery Tribunal (DRT), Guwahati in S.A. No.29 of 2019 instituted by the original borrower, Biswajit Ghosh versus Tripura Gramin Bank and another whereby the SARFAESI application was dismissed.

3. The scope of interference under Article 227 of the Constitution of India have been well settled by decisions of the Apex Court rendered from time to time as in the case of ***K. Chinnammal (Dead) Thr. Lrs. v. L.R. Eknath and another*** reported in **2023 SCC OnLine SC 611** at paragraphs 31 & 32 which are extracted hereunder:

"31. As far as the width and amplitude of powers of the High Court under Article 227 of the Constitution is concerned, we need only take note of, in praesenti, *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97, and *Garment Craft v. Prakash Chand Goel*, (2022) 4 SCC 181. In *Estralla Rubber* (supra), it was stated:

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High

Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. *This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565]. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”*

32. In the more recent *Garment Craft* {supra}, this Court put it thus:

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217 : (2010) 1 SCC (Civ) 69] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

4. In order to appreciate the nature of challenge, the relevant facts borne from record are being briefly referred to hereinafter.

The bare necessary facts leading to the instant petition are referred to herein below: On an application made by the original borrower, who was a government contractor, the respondents-Bank sanctioned overdraft/CC limit of Rs.65 lakhs in account No.8097211500020 on 26.03.2011 and term loan of Rs.70 lakhs in term loan account No.8097302632672. Both the loans were disbursed on 30.03.2011 and were to carry rate of interest @ 14.5 % per annum. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 09.07.2014 upon the original borrower as both the accounts had become non-performing assets. The total outstanding dues were adjudged as Rs.1,60,13,975/- as on 30.06.2014. A point has been raised by the petitioners that Section 13(2) notice was not served upon the original borrower and that 60 days notice was not given upon him. Learned DRAT has dealt with this issue and held that no such pleading had been raised before learned DRT covering the issue which is being sought to be raised in appeal. Ms. K. Samajpaty, learned counsel for the petitioners, has placed the relevant paragraphs of the application before learned DRT bearing S.A. No.29 of 2019 which is at Annexure-K.

5. A plain reading of the relevant paragraphs No.(v), (vi), (vii) & (viii) indicates that no such plea was raised before the learned DRT regarding non-service of notice. The SARFAESI application was dismissed vide order dated 21.06.2019 which is at Page 119 of the record. It is not in dispute that no

representation or objection was made against Section 13(2) notice by the borrower.

6. Another plea has been raised in challenge to the impugned order passed by the DRAT on the findings of the learned DRT in SARFAESI application regarding the physical possession of the property in question. It is submitted that physical possession was never taken by the Bank and it still remains with the borrower.

The answer to it can be found from the possession notice [Annexure-R/1 to the Counter Affidavit of the respondents-Bank] which has been countersigned by the original borrower Biswajit Ghosh on 10.03.2017; a fact which has been recorded in the order of the DRT dated 21.06.2019.

7. One more point has been raised by the petitioners herein that the order to take physical possession was passed by the Sub-Divisional Magistrate and not by the District Magistrate as required under Section 14 of the SARFAESI Act, 2002.

The respondents have answered this objection relying upon the provisions of Section 14 and specifically 14(1-A) of the SARFAESI Act where the District Magistrate can delegate his power to subordinate authorities. They also contend that assistance of Magistrate is required only if there is a resistance in taking over possession. If the possession of the immovable property has been taken in the presence of the borrower and countersigned by him, this issue recedes into background.

8. In the chronology of events which are being chronicled above, an important correspondence needs to be referred to. It is a letter dated 13.03.2017 [Annexure-R/2 to the Counter Affidavit of the respondents-Bank] of the original borrower much after issuance of Section 13(2) notice whereby he requested the bank to accept a compromise settlement for liquidation of the loan. He proposed to clear the dues through compromise settlement by way of paying a sum of Rs.1,37,00,000/- and as a part of it, to deposit cash/cheque amount of Rs.37,00,000/- by 31.03.2017 and the rest portion of Rs.1 crore to be repaid by 30.06.2017 in instalments. It has, however, been pointed out by learned counsel for the petitioners that 25% of the dues were paid by the borrower by 31.03.2019, but because of intervening bank holidays in the next three days, the remaining amount could not be paid.

9. The original outstanding dues as indicated in the SARFAESI notice swelled up to a considerable amount because the dues were not liquidated in full. The borrower had also proposed to settle the dues through his letter dated 13.03.2017. The bank issued a letter on 05.09.2017 addressed to the original borrower for liquidation of his both loan accounts which had outstanding balance of Rs.47,05,228/- and Rs.49,18,119/- which were to be updated with interest and related legal/ancillary costs. Since this notice remained uncomplied by payment of the balance dues by the borrower, the auction sale notice was issued on 28.02.2019 pursuant where to the auction was held after 30 days on 29.03.2019 in which respondent No.4 turned out to be

successful auction purchaser. Bank proceeded to issue sale certificate in his favour on 25.06.2019. The sale certificate indicates that the auction process realised about 2.40 crores against the mortgaged property.

10. Being aggrieved by the order of the learned DRT, the original borrower had approached the learned DRAT under Section 18 of the SARFAESI Act, 2002. In between, the legal heirs, who are the present petitioners, approached this Court in WP(C) No.1199/2019 in which an interim order was passed on 27.09.2019 in favour of the petitioners asking them to deposit Rs.5 lakhs towards liquidation of the outstanding dues. However, the bank appeared before the learned Writ Court and pointed out that certain facts were not brought to the notice of the learned Writ Court regarding the auction process as also the pending DRAT proceedings. The writ petition was disposed of on 26.11.2019 giving liberty to the petitioners to raise all issues before the DRAT. The learned Writ Court however continued the order of *status quo* for a period of two months from that date. Evidently by efflux of time till the SARFAESI appeal was decided by the impugned order dated 21.06.2023, the order of *status quo* had ceased to be in force. It is pertinent to mention here that the Bank, in the meantime, had issued an intimation upon the borrower on 09.09.2019, which is at Page 254 of the record- a part of the Counter Affidavit of the Bank, whereunder the borrower was intimated that after realisation of the outstanding dues against the two non-performing assets accounts of the borrower, the remaining balance of Rs.92,40,275.30 was required to be remitted to the borrower after deduction of Rs.7,83,360/- being legal and other

charges to be realised from the aforesaid amount. He was requested to inform about his account details to enable him to remit the balance amount.

11. On part of the bank, it has been sought to be canvassed that the SARFAESI proceedings were conducted as per the procedure prescribed and in accordance with law. The bank in all fairness even informed the borrower to remit the balance amount which remained after realisation of the sale proceeds from the mortgaged assets of the borrower. On the part of the bank, it has been further informed that the amount of Rs.5 lakhs, deposited by the legal heirs of the borrower in the form of a demand draft as per the interim order passed in WP(C)1199 of 2019 has not been encashed by the bank, neither adjusted against any outstanding dues. It is still available to be remitted to the borrower. In the chronology of events, it is also pertinent to state here that the original borrower died sometime during pendency of the proceedings before the learned DRAT.

12. The petitioners in the sequence of facts, dates and events narrated hereinabove have raised a number of pleas to assail the order passed by the learned DRAT *inter alia* as under:

(i) that no notice under Section 13(2) was served upon the borrower;

(ii) the requirement of 60 days for serving of notice in terms of Section 13(2) was not complied;

(iii) the physical possession of the property still remains with the petitioners who are the legal heirs of the borrower.

(iv) Petitioners have also questioned the computation of the outstanding dues by the Bank.

13. Learned counsel for the petitioners submits that the computation of the outstanding dues is not proper as even after the possession notice, the borrower had paid an amount of Rs.1,13,00,000/-. If the outstanding dues have been liquidated to the extent of Rs.1,13,00,000/-, how could the bank realise a sum of Rs.1,47,00,000/- after auction sale of the mortgaged properties of the borrower. Petitioners have further questioned the power of the Sub-Divisional Magistrate in taking over the possession of the property, as it is only the District Magistrate who is authorised to pass order(s) for rendering assistance in taking over the physical possession of the property.

14. Ms. Samajpaty, learned counsel for the petitioners, has also submitted that the learned DRAT failed to take note of the following decisions cited by the appellant:

(a) *Mardia Chemicals Limited v. Union of India & Others* reported in (2004) 4 SCC 311.

(b) *Mathew Varghese v. M. Amritha Kumar & Others* reported in (2014) 5 SCC 610.

(c) *National Textile Corporation Limited v. Nareshkumar Badrikumar Jagad & Others* reported in (2011) 12 SCC 695.

15. On the part of the respondents-Bank, reliance has been placed upon a recent decision of the Apex Court in the case of ***Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. & Others*** in Civil Appeal Nos.5542-5543 of 2023. It is submitted that once the sale certificate has been issued to the auction purchaser, the mortgaged property cannot be redeemed by the borrower. In this case, the bank has duly followed the entire procedure relating to issuance of notice under Section 13(2), procedure prescribed under Section 13(4) while taking physical possession of the mortgaged property, and also the timelines prescribed for auction sale of the property. According to the respondents, the scope of interference under Article 227 of the Constitution of India is limited to examine whether the learned inferior tribunals have transgressed their jurisdiction or acted beyond their jurisdiction or committed perversity in exercise of their jurisdiction.

16. I have heard learned counsel for the parties at length. I have also gone through the relevant pleadings and documents which are placed from the record which have been referred to in the foregoing part of the order. I have also gone through the impugned order passed by the learned DRAT.

The scope of interference under Article 227 of the Constitution of India stands well delineated by a series of judgments rendered by the Apex Court as had also been referred to in the opening paragraph of the judgment. This Court in its supervisory jurisdiction under Article 227 of the Constitution of India is not required to step into the shoes of an appellate tribunal to examine each and every issue on merits unless the findings rendered on that score by the

learned Tribunal suffer from perversity in the sense that either there were no materials to record such a finding, or the learned Tribunal has taken into consideration extraneous materials to arrive at such a decision or that the order of learned Tribunal suffers from such other jurisdictional errors.

17. Under the SARFAESI Act, the legislature has, with a purpose to enable the banks and financial institutions to realize long term assets, manage problems of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction, enabled them to take recourse to the provisions as are prescribed under Section 13 to ensure securitisation of financial assets of banks and financial institutions without recourse to legal proceedings before any Court or Tribunal. Before resorting to any of the measures provided under Section 13(4) of the SARFAESI Act, the financial institution is however required to serve a notice upon the borrower/guarantor to make an objection against the proposed action for realisation of the outstanding dues arising out of non-performing assets of the borrower within 60 days. Sub-section (3-A) was inserted by the Amendment Act 30 of 2004 to enable the borrower to make any representation or raise any objection to such notice. The secured creditor is required to consider such representation or objection and if it came to conclusion that such representation or objection is not acceptable or tenable to communicate within 15 days of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. However, proviso to Sub-

section (3-A) also indicated that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17. In case the borrower fails to discharge the liability in full within the period specified in sub-section (2), the secured creditor is allowed to take recourse to one or more of the measures enumerated under sub-Section (4) of Section 13 to recover his secured debt.

18. Section 13(4) prescribes a detailed procedure as to how different measures can be taken over by the secured creditor including taking over the possession of the secured assets of the borrower and right to transfer by way of lease, assignment or sale for realising the secured asset. It also enables the secured creditor to take over the management of the business of the borrower with a right to transfer by way of lease, assignment or sale for realising the secured assets. It also provides for appointment of a person to manage the secured assets of the borrower the possession of which has been taken over by the secured creditor. It further authorises the secured creditor to require any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay to the secured creditor, so much of the money as is sufficient to pay the secured debt.

19. The respondents-Bank in the present case after serving notice to the borrower under Section 13(2) chose to initiate auction proceedings for realisation of the debts from the mortgaged assets of the borrower. The

borrower had failed to file any objection to such notice. The proceedings initiated by the secured creditor i.e. the bank in this case were subjected to challenge before the learned DRT in a SARFAESI application under Section 17 of the SARFAESI Act. The learned DRT dismissed the application, which became the subject matter of appeal before the learned DRAT. The relevant documents which have been enclosed by the respondents-Bank indicate that the borrower had made a proposal for liquidation of the outstanding dues by making paying of Rs.1.37 crores on his own in instalments by a particular date i.e. 30.06.2017. Even by the statement made on behalf of the petitioners that the borrower had paid a sum of Rs.1,13,00,000/- to the bank, the amount proposed to be liquidated through a compromise settlement by the borrower remained unpaid. In such an event, the bank was left with no option rather than to take recourse to the measures provided under Section 13(4) of the SARFAESI Act by going for auction sale of the mortgaged assets of the property.

20. The auction sale of the mortgaged assets of the property was undertaken by issuance of 30 days notice on 28.02.2019. The auction was held on 29.03.2019 which fructified in favour of the respondent No.4 herein upon payment of Rs.2.40 crores. A question has been raised on behalf of the petitioners that the physical possession of the property was not taken by the bank, and that the order of the Sub-Divisional Magistrate enabling the bank to take over possession was without jurisdiction. However, on a perusal of the possession notice, which is dated 10.03.2017 at Annexure-R/1 to the Counter Affidavit, it is evident that the physical possession of the mortgaged property

was taken in the presence of the borrower without any protest and he had countersigned on the possession notice. If that be so, any question as to illegal taking over of the physical possession of the property from the borrower or the possession remaining with the legal heirs of the borrower, i.e. the petitioner recedes into the background. The instant plea seems to have been raised at the far end of the proceedings before the learned DRAT.

21. So far as the plea relating to computation of the outstanding dues against the borrower is concerned, this Court under Article 227 of the Constitution of India is not called upon to enter into the computation of outstanding dues by the secured creditor i.e. the respondents-Bank in the present case. It is also pertinent to refer to the recent decision of the Apex Court rendered in the case of ***Bafna Motors (Mumbai) Pvt. Ltd.*** relied upon by learned counsel for the respondents-Bank at this stage. In a SARFAESI proceeding where the borrower has failed to liquidate the outstanding dues before the expiry of 60 days notice under Section 13(2) of the SARFAESI Act and even after holding out a promise to settle the matter through compromise as back as 13.03.2017, the recourse taken by the Bank to realise the outstanding dues by sale of the mortgaged assets of the borrower through auction mode which is permissible under Section 13(4) of the SARFAESI Act cannot be faulted upon. Further, if the auction process has fructified by sale of the mortgaged assets of the borrower in favour of a successful auction purchaser i.e. the respondent No.4 herein, then in view of the decision rendered by the Apex Court in ***Bafna Motors (Mumbai) Pvt. Ltd.***, it is not open for the

borrower in any case to redeem the mortgaged property by resorting to payment of any balance dues either. This Court also appreciates the gesture of the respondent-Bank in offering to remit the remaining balance of Rs.92,40,275.30 after deducting the legal and ancillary charges of Rs.7,83,360.00 in favour of the borrower by issuing a notice upon him on 09.09.2019. The Bank has also not encashed the demand draft of Rs.5 lakhs which was deposited as a condition of interim stay by the Writ Court in WP(C) No.1199/2019 which however was disposed of finally on 26.11.2019 on appearance of the bank and taking note of the fact that DRAT proceedings were underway.

22. In substance, none of the grounds raised by the petitioners are worth acceptance calling for interference by this Court under Article 227 of the Constitution of India. As such, this Court does not find any merit in this revision petition. It is accordingly dismissed.

23. Stay order, if any, stands vacated.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

MUNNA SAHA
Digitally signed by MUNNA
SAHA
Date: 2024.03.01 11:09:58
+05'30'