

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.682 of 2024

Abdul Mallik, S/o:-Lt. Abdul Barik, Power of Attorney Holder of Chalima Bibi, W/o:-Lt. Abdul Barik, R/o:-Vill+P.O:-Bhagaban Nagar, P.S & Sub-Division:-Kailasahar, District:-Unokoti, Pin:-799279, Aged about:-45 Years
.....Petitioner(s);

Versus

1. Tripura Gramin Bank, represented by its Chief Managing Director, Head Office at Abhoynagar, P.O:-Abhoynagar, P.S:-West Agartala, District:-West Tripura, Pin:-799006.
2. The Branch Manager, Tripura Gramin Bank, Gournagar Branch, P.O:-Gournagar, P.S:-Kailasahar, District:- Unokoti, Pin:-799279.
3. The Authorized Officer, Tripura Gramin Bank, Gournagar Branch, P.O:-Gournagar, P.S:-Kailasahar, District:- Unokoti, Pin:-799279.
4. Md. Abdul Matlib, S/O: Lt. Abdul Rahaman, R/O Vill: Gournagar, P.O & P.S: Kailashahar, District: Unokoti, PIN:799279

.....Respondent(s).

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate.

For Respondent(s) : Mr. Prabir Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

03/12/2024

Heard Mr. Arijit Bhaumik, learned counsel for the petitioner and Mr. Prabir Saha, learned counsel for the respondents-Bank.

2. Petitioner seeks quashing of the possession notice dated 25.09.2024 issued by the Authorized Officer, Tripura Gramin Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act", *for short*] which, according to the petitioner, is only a symbolic possession of the property mentioned in the schedule of the mortgaged assets of the petitioner.

3. Petitioner admittedly was a guarantor to the loan of Rs.13,58,700/- sanctioned jointly in favour of Md. Saiful Hassan along with his father Md. Abdul Matlib-respondent No.4 for prosecuting higher education (MBBS) in Bangladesh by the respondents-Tripura Gramin Bank. Disbursements of loan amount were made with effect from 23.07.2012 to 19.01.2016 with a condition to be repaid along with 13% interest in 60 equated consecutive monthly installments of Rs.22,645/-. The said loan was sanctioned on the basis of personal guarantee of three persons including Chalima Bibi @ Salima Bibi i.e. the present petitioner (appearing through her Power of Attorney and her son) who stood as guarantor by way of a registered mortgage dated 27.07.2012 in respect of her property situated at Sub-Division- Kailashahar, Mouja- Bhagaban Nagar, T.K.- Gour Nagar, Khatian No.588, Hal Dag No.1414, Classification of Land- Tilla, land measuring 1.12 acres with the described boundage [Annexure-R/1 to the Counter Affidavit of respondents-Bank]. On failure to timely repay on part of the borrowers, the loan was declared as Non Performing Asset on 31.07.2017. Thereafter a notice under Section 13(2) of the SARFAESI Act was issued on 25.08.2021 [Annexure-R/6] both to the borrower and also to the guarantor. Let it be indicated here that borrower had approached this Court in WP(C) No.611/2018 which was disposed of with certain observations and directions which the borrower failed to comply. Such observations and directions quoted hereunder:

“11. However, in the backdrop of the said submission, this court would direct the petitioner to submit the undertaking from the said guarantor in the bank within a period of 15 (fifteen) days from the date when a copy of the order will be supplied to the petitioner. If that undertaking is accepted by Tripura Gramin Bank they can waive the procedure of the SARFAESI Act, but that is left to their discretion. The Tripura Gramin Bank always within its competence to go for recovery by the provisions of the SARFAESI Act following the procedure, but since in this case the petitioner and the guarantor will come forward by agreeing

for the auction, the competent authority may also waive the requirement of issuing the notice. Necessary documentation is, however, to be formalized. But the Tripura Gramin Bank shall also appreciate the gesture that has been shown by the petitioner and as such it is advisable that there should be a further consultation to explore the possibility of an one time settlement taking the petitioner and the guarantor in confidence. Till such recourse is taken the bank authority shall not recover any money from the salary account of the petitioner.”

4. The notice under Section 13(2) was said to be refused both through registered cover and also through the agent of the Bank [Annexure-R/6 & R/7 are annexed in proof thereof]. Thereafter symbolic possession was taken on 04.12.2021 [Annexure-R/8]. The Bank had also proceeded for recovery of installments through letters to the Drawing & Disbursing Officer of respondent No.4 and other co-borrower as well as to the guarantors on 14.09.2023 and 27.05.2024 with a request to arrange for liquidation of the said loan, but the efforts of the Bank went in vain. Thereafter, the Bank approached the District Magistrate & Collector, Unakoti District for taking physical possession of the said mortgaged property registered in favour of the respondents-Bank. The District Magistrate & Collector, Unakoti District issued a letter dated 10.07.2024 to the Sub-Divisional Magistrate, Kailashahar for taking over of the physical possession of the said mortgaged land. The Sub-Divisional Magistrate, Kailashahar passed order on 24.09.2024 on the application of the Bank for handing over the physical possession of the scheduled land to the Authorized Officer of the respondents-Bank [Page 118 to the Counter Affidavit]. Thereafter, according to the respondents-Bank vide possession notice dated 25.09.2024 [Annexure-5], the physical possession of the mortgaged assets of the guarantor/petitioner was taken. Petitioner does not dispute the fixation of the possession notice on his premises. Being aggrieved by the impugned actions, petitioner approached this Court for quashing the possession notice

dated 25.09.2024 issued by the Authorized Officer, Tripura Gramin Bank under sub-Section (4) of Section 13 of the SARFAESI Act.

5. Mr. Arijit Bhaumik, learned counsel for the petitioner, submits that the notice of possession of secured assets under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 is bad in law since petitioner was never served with any notice under Section 13(2) of the SARFAESI Act. Learned counsel for the petitioner also submits that the requirement of taking physical possession of the mortgaged assets of the petitioner in terms of Section 14 have not been complied with as there is no taking over of the possession by the District Magistrate or his subordinate officer and then handing it over in favour of the secured creditor i.e. the Bank. Learned counsel for the petitioner has relied upon paragraphs 15, 16 & 18 of a decision of the Apex Court rendered in the case of ***Balkrishna Rama Tarle dead through legal representatives & another v. Phoenix ARC Private Limited & others*** reported in (2023) 1 SCC 662 in support of his submissions that the statutory requirement having not followed the entire action is bad in law and amenable to the writ jurisdiction of this Court. Therefore, the impugned physical possession notice may be quashed. It is asserted that the physical possession of the mortgaged assets and documents relating thereto are still in possession of the petitioner.

6. On the other land, Mr. Prabir Saha, learned counsel for the respondents-Bank, has relied upon the contents of the Counter Affidavit to oppose the prayer. The relevant narration of facts have been indicated in the

opening paragraphs of this order so far as the issuance of loan in favour of Md. Saiful Hassan and respondent No.4 and the declaration of the said loan as Non Performing Asset on account of non-payment of installments on regular basis and issuance of 13(2) notice on 25.08.2021. Learned counsel for the respondents-Bank submits that petitioner has refused to accept notice under Section 13(2) both under registered cover with A/D and through the Bank's agent which are Annexures-R/6 & R/7. Thereafter, the notice of demand was issued and on failure by the borrower and the guarantors to repay the loan, steps for taking physical possession of the mortgaged secured assets of the present petitioner/guarantor has been taken in accordance with law. The respondents-Bank has approached the District Magistrate & Collector, Unakoti District with an application to take recourse to the provision of Section 13(4) for taking physical possession of the mortgaged assets. Thereafter, upon order passed by the Sub-Divisional Magistrate, Kailashahar on 24.09.2024, physical possession has been taken by the Bank on 25.09.2024. It is contended that the petitioner seeks to dispute service of notice under Section 13(2) of the SARFAESI Act and also the factum of taking over of physical possession by the Bank under Section 13(4) of the SARFAESI Act. These are disputed questions of fact. At the same time, Section 17 provides remedy to any aggrieved person including borrower to approach the Debt Recovery Tribunal having jurisdiction in the matter against any of the measures referred to in sub-Section(4) of Section 13 of the SARFAESI Act. It is submitted that such disputed questions of fact should not be agitated before the Writ Court when the statute provides comprehensive alternative remedy in view of the decision rendered by the Apex

Court in the case of *United Bank of India v. Satyawati Tondon & others* reported in (2010) 8 SCC 110 and *Authorized Officer, State Bank of Travancore & another v. Mathew K.C.* reported in (2018) 3 SCC 85 as well as in the case of *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & others* reported in (2022) 5 SCC 345. Learned counsel for the respondents-Bank also relied upon a decision of the Apex Court in the case of *Celir LLP v. Bafna Motors (Mumbai) Private Limited & others* reported in (2024) 2 SCC 1. It is submitted that the writ petition deserves to be dismissed.

7. We have considered the submission of learned counsel for the parties and taken note of the relevant materials placed on record.

On consideration of the rival submission of the parties, it appears that petitioner has questioned the taking over of the physical possession of his mortgaged assets on the ground that the requirement of law prescribed under Section 13(4) have not been complied with. Petitioner insists that between 24.09.2024 when the order for taking over physical possession was passed by the Sub-Divisional Magistrate, Kailashahar and 25.09.2024 when such physical possession is claimed to have been taken by the Banks, there has been no taking over of physical possession by the District Magistrate or his subordinate and handing over of such possession in favour of the respondents-Bank. However, learned counsel for the petitioner has not been able to show any particular prescribed format in which such physical possession of the property is to be taken over by the District Magistrate or his subordinate and in turn handed over to the Bank in question. On the other hand, Rule 8(1) prescribes form of notice in Appendix-IV whereunder physical possession of such mortgaged assets of

the borrower or guarantor are to be taken over in course of action taken for sale of the immovable property of the borrower or guarantor. In any case, this contention of the petitioner is in the realm of a disputed question of fact which the Writ Court is neither equipped to go into nor required to. The SARFAESI Act provides a comprehensive remedy to the aggrieved person including the borrower to approach the Debt Recovery Tribunal being aggrieved against any of the measures referred to in sub-Section (4) of Section 13 taken by the secured creditor or his Authorized Officer under the said chapter. Under Section 17(2) of the SARFAESI Act, the Debt Recovery Tribunal is obligated to consider whether any of the measures referred to in sub-Section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of the Act and the rules made thereunder. Therefore, petitioner has an adequate alternative remedy to raise all issues of fact and law as regards compliance of the provisions of Section 13(4) of the SARFAESI Act before taking physical possession of the property in question.

8. In the case of ***Balkrishna Rama Tarle*** (supra) cited by the petitioner, the Apex Court has delineated on the procedure prescribed under Section 14 of the SARFAESI Act for taking physical possession of the secured assets by the secured creditor. The secured creditor is obliged to approach the District Magistrate/Chief Metropolitan Magistrate by way of a written application requesting for taking possession of the secured assets and documents relating thereto and for being forwarded to the secured creditor for further action. The Chief Metropolitan Magistrate/District Magistrate is statutorily obliged to immediately move into action on receipt of such written

application under Section 14(1) of the SARFAESI Act and pass order after verification of compliances of all formalities by the secured creditor referred to in proviso to Section 14(1) of the Act. In the said case of ***Balkrishna Rama Tarle*** (supra), the Additional District Magistrate had instead of passing a final order under Section 14 to assist secured creditor in getting possession of secured assets and while keeping such application pending, passed orders that only after termination of tenancy rights of petitioner by finance company (secured creditor) by following due procedure of law, further orders regarding possession of mortgage property shall be passed and said application shall be decided. This order of the Additional District Magistrate was interfered by the High Court and upheld by the Apex Court in the instant judgment. The Apex Court at para 18 has observed that at the stage of Section 14(1), CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party is to be relegated to raise objections on the proceedings under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal. Therefore in the facts of the present case, the instant decision is of no aid to the present petitioner. Learned counsel for the respondents-Bank has relying upon the decisions of the Apex Court in the case of ***Satyawati Tondon*** (supra) and other subsequent decision rightly submitted that the appropriate remedy for an aggrieved person like the petitioner/guarantor is to invoke the jurisdiction of the competent Debt Recovery Tribunal if he is aggrieved by any of the measures taken by the

respondents-Bank under Section 13(4) of the SARFAESI Act instead of approaching the Writ Court.

9. Having regard to the discussions made hereinabove, we are not inclined to interfere in the matter. The instant writ petition is accordingly dismissed. However, petitioner may have the liberty to approach the jurisdictional Debt Recovery Tribunal against the impugned action.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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