

GAHC040009882024



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

Case No. : WP(C)/317/2024

Mrs Tarh Ayo
Wife of Tarh Takar, resident of village Ambam, Circle Pistana, Keyi Panior District,
Camp Papu Nallah, Naharlagun 791110

VERSUS

The State Bank of India and Anr
represented by the Branch Manager, Nirjuli Branch, Arunachal Pradesh, Papumpare
District, Arunachal Pradesh 791109 2:The Assistant General Manager
Age: 0
Occupation :
State Bank of India
Na-Ali Road
Jorhat
Assam 78500

Advocate for the Petitioner : P Chakraborty, 2 Anita Das

Advocate for the Respondent : H R Obing, S Dutta, Yomrik Karga, Bullo Taka, 1 M Laling

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20.09.2024

Heard Ms. P. Chakraborty, learned counsel for the petitioner and Mr. S. Dutta, learned counsel for the respondent-bank.

2. The case of the petitioner is that she is a borrower of the respondent

No.1 bank and had availed a cash credit loan of Rs.48.00 lakh for farming and marketing of cardamom. The loan was secured by executing a mortgage in respect of a particular land in question. Due to reasons beyond the control of the petitioner, there was a failure in business and the account of the petitioner was classified as NPA on 28.11.2017. Consequently, the respondent bank approached the Debts Recovery Tribunal by filing a recovery claim for a sum of Rs.66,11,354.72, which was registered as OA No. 154 of 2020.

3. The original application was decided *ex-parte* by order dated 23.04.2021. For recovery of the said amount, a recovery proceeding was registered. In course of time the Recovery Officer had passed the impugned order dated 24.04.2024, thereby appointing a receiver for taking physical possession of the property of the petitioner on conditions which contain in the said order dated 24.04.2024. Accordingly, the petitioner has assailed the said order of the Recovery Officer, Debts Recovery Tribunal, Guwahati passed in connection with OA No. 154 of 2020 in which recovery certificate No. 220/2021 was issued.

4. The learned counsel for the petitioner has submitted that the petitioner has submitted a One Time Settlement (OTS for short) proposal for settlement of the dues at Rs.40.00 lakh by a proposal dated 17.07.2024 and has also deposited upfront money of Rs.50,000/- which is claimed to be as per the RBI guidelines. However, the respondent bank had rejected the OTS proposal of the petitioner by a communication dated 03.08.2024 on the ground that the proposal is undervalued.

5. The learned counsel for the petitioner submits that the property of the

petitioner is a residential house and that she is residing there with her family and the petitioner would suffer irreparable loss if she dispossessed from her property. Accordingly, it is submitted that as the petitioner is ready and willing to settle the matter on compromise, she has approached this Court under Article 226 of the Constitution of India and has assailed the said impugned order dated 24.04.2024 intending that the matter would be compromised.

6. Per contra, the learned counsel for the respondents has questioned the maintainability of this writ petition for which he places reliance on the case of *Bijnor Urban Cooperative Bank Ltd. and Ors. v. Meenal Agarwal and Ors.* (2023) 2 SCC 805: 2021 0 Supreme (SC) 820. It is submitted that by the said judgment, the Supreme Court of India has held that a writ petition for being given benefit of OTS cannot be prayed as a matter of right.

7. Justifying the rejection of the OTS proposal on the ground that it is undervalued, it is submitted that in the said decision the Supreme Court of India it has also held that if the bank /financial institution is of the opinion that the lonee has the capacity to make the payment and /or that the bank /financial institution is able to recover the entire loan amount even by auctioning the mortgage property /secured property either from the lonee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS scheme.

8. In the present case in hand, it is not in dispute that there is an *ex-parte* judgment and order by the Debts Recovery Tribunal, Guwahati in OA No. 154 of 2020, which was passed on 23.04.2021, which is evident from the copy of Annexure-1 to the writ petition. The said order has attained finality, which is

also not disputed by the petitioner. The petitioner has annexed a copy of a notice of eviction issued on 23.05.2023 by the Debts Recovery Tribunal as Annexure-3 and subsequently the impugned order dated 24.04.2024 was passed, appointing a receiver to take physical possession of the property. The said sequence also discloses that the recovery certificate issued by the Debts Recovery Tribunal, Guwahati in favour of the respondent bank has not yet been satisfied and recovery by the bank is still pending.

9. Under such circumstances, it cannot be held that the order of appointment of receiver to take over the movable and immovable property of the petitioner by impugned order dated 24.04.2024 is illegal or untenable in any view of the matter.

10. The leaned counsel for the petitioner has submitted that as the petitioner seeks indulgence of the Court to allow the petitioner to submit an OTS proposal, she also prays that matter be kept pending.

11. In this regard, the Court is of the considered opinion that keeping the matter pending would not serve the interest of justice. Because the recovery proceedings are already initiated and there is no ground whatsoever to hold that the said impugned order 24.04.2024 ought not to be acted upon.

12. Therefore, the Court does not find any merit in this writ petition and the same is dismissed.

13. However, before parting with the records, the Court is inclined to observe that as the leaned counsel for the petitioner, upon instructions, has

submitted that the petitioner desires to make an offer to the respondent bank for out of Court compromise of the matter either by way of OTS or in any other mode, on a query of the Court, the learned counsel for the respondents has submitted that such an application can be handed over to the SARB (Stressed Assets Recovery Branch), Jorhat who would forward the application to the competent Authority. It submitted that there are committees constituted, who have financial power up to a particular financial limit and therefore, he is not in a position to inform as to which committee would look into the matter.

14. Accordingly, it is provided that in the event the application of the petitioner for compromise or OTS, etc. is submitted by submitted before the SARB, Jorhat, the said application shall be forwarded to the competent Authority and a decision thereon shall be conveyed to the petitioner within a period of 4(four) weeks from the date of such application at petitioner's email address to be provided by the petitioner. The learned counsel for the respondent bank further submits that that normally there would be a requirement to deposit at least 25% of the total outstanding dues along with such proposal and therefore, he submits that before depositing such prayer, the petitioner should ascertain as to what would be the actual amount required to be deposited from the concern Officer at the SARB, Jorhat. The learned counsel for the petitioner shall take note of the said submission made by the learned counsel for the respondents.

15. With such observation as indicated above, this writ petition stands dismissed.

JUDGE

Comparing Assistant