

GAHC010061442024



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

Case No. : WP(C)/1695/2024

MD. TAMANNA E RASSULL
S/O- LATE SARAF UDDIN LASKAR R/O- JAIL ROAD KALANG PAR
NAGAON , DIST- NAGAON, DIST- NAGAON, ASSAM, PIN - 782001 AND
PRESENTLY RESIDED AT FLAT NO. 104, EDEN BLOCK, PALM GROVE,
JURIPAR, GUWAHATI- 781022.

VERSUS

STATE BANK OF INDIA AND 2 ORS
REPRESENTED BY THE AUTHORIZED OFFICER, STRESSED ASSETS
RECOVERY BRANCH (SARB), MRD ROAD, BAMUNIMAIDAM, GUWAHATI-
781021, ASSAM.

2:THE AUTHORIZED OFFICER

STRESSED ASSETS RECOVERY BRANCH (SARB)
MRD ROAD
BAMUNIMAIDAM
GUWAHATI- 781021
ASSAM.

3:THE BRANCH MANAGER
STATE BANK OF INDIA
G.S. ROAD BRANCH
GUWAHATI- 781005
IFSC CODE

Advocate for the Petitioner : MR. M J BARUAH

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

27.03.2024

(S.K. Medhi, J)

Heard Shri A.K. Purkayastha, learned counsel for the petitioner.

On the last occasion, after considering the subject matter involved, the petitioner was directed to furnish a copy of the writ petition to the respondent - Bank pursuant to which, the respondent-Bank is represented today by Shri S. Dutta, the learned counsel.

The petitioner has put to challenge Notices dated 18.01.2024 and 15.02.2024 and the consequent E-Auction Sale of the properties of the petitioner which was fixed on 26.03.2024.

It is the case of the petitioner that O.A. No. 133/2022 filed by the Bank being pending and the next date being fixed on 05.04.2024, the Auction Sale could not have been fixed on 26.03.2024.

It is submitted that without there being adjudication in the O.A., if the Auction Sale is allowed to proceed, grave prejudice would be caused to the petitioner.

Per contra, Shri Dutta, the learned counsel for the Bank has submitted that the projections made on facts by the petitioner are not wholly correct. By referring to the order dated 07.08.2023 passed by the learned DRT, Guwahati which has been annexed as Annexure I, it is submitted that it was a final order passed in an application filed under Section 17 (1) of the SARFAESI Act, 2002,

wherein amongst others the Possession Notice dated 09.06.2022 issued under Section 13 (4) of the Act was one of the subject matter of challenge.

It is submitted that the final order of dismissal was not put to any further challenge by the petitioner and therefore, had attained finality. He further submits that the steps to go ahead with the Auction Sale has got nothing to do with the O.A. instituted by the Bank which is otherwise also prior in point of time.

At this stage, Shri Purkayastha, the learned counsel for the petitioner submits that in case, this Court is not inclined to grant the relief, he may be given liberty to approach the Tribunal under the appropriate provisions of law.

After hearing the learned counsel for the parties and on consideration of the materials on record, we are of the view that the grievance of the petitioner so far as the Possession Notice dated 09.06.2022 issued under Section 13(4) of the Act was unsuccessfully raised before the Tribunal in S.A. No. 56/2022 along with I.A. No. 304/2022 which was dismissed on 07.08.2023 and it is not in dispute that the said order of 07.08.2023 was not put to further challenge and therefore has attained finality. The Auction Sale is a consequence of the said order. At the same time, O.A. No. 133/2022 was admittedly instituted prior in point of time and the next date in the said case is fixed on 05.04.2024.

In view of the above, we are of the considered opinion that the Auction Sale Notice dated 05.02.2024 should not be connected with O.A. No. 133/2022, the hearing of which is fixed on 05.04.2024.

We have been informed that pursuant to the interim direction passed by this Court on 22.03.2024, the Auction Sale was not held on the date fixed i.e., 26.03.2024.

In view of the above discussions, we find no merits for interference in this present writ petition as otherwise also the interference by a writ court in proceedings under the DRT or SARFAESI has been deprecated by the Hon'ble Supreme Court in a catena of decisions as the entire objective of the Act is to facilitate Banks and Financial Institutions to recover their *bona fide* dues.

Accordingly, the writ petition stands dismissed.

However, liberty is granted to the petitioner to avail the appropriate recourse of law before the Tribunal.

The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant