

GAHC010069092024



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

Case No. : WP(C)/1881/2024

SACHANGKA BURAGOHAIN
S/O- SRI BHUPENDRA NATH BURAGOHAIN, R/O- MECHAGARH,
AMKOTICHUK, P.O. AMKOTIA, DIST. SIVASAGAR, PIN- 785640, ASSAM

VERSUS

THE REGIONAL MANAGER, INDIAN BANK AND 3 ORS
(ERSTWHILE ALLAHABAD BANK), SHARMA AND SHARMA MARKET, R. G.
BARUAH ROAD, OPPOSITE GUWAHATI COMMERCE
COLLEGE, CHANDMARI, GHY-781003.

2: THE CHIEF MANAGER -CUM- AUTHORISED OFFICER

INDIAN BANK
SIVASAGAR BRANCH AT SINGHA MARKET
WARD NO. 4
J.P. AGARWALA PATH
NEAR CENTRAL MARKET
SIVASAGAR
PIN-785640
ASSAM

3: THE CHIEF MANAGER (RECOVERY)
INDIAN BANK
ZONAL OFFICE AT T.R. PHUKAN ROAD
CHIRING CHAPORI
DIBRUGARH-786001.

4: THE BRANCH MANAGER

INDIAN BANK
SIVASAGAR BRANCH AT SINGHA MARKET

WARD NO. 4
J.P. AGGARWALA PATH
NEAR CENTRALMARKET
SIBSAGAR
PIN- 785640

Advocate for the Petitioner : MR. A R SHOME

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 08-04-2024

Heard Mr. A.R. Shome, learned counsel for the petitioner as well as Mr. S. Sharma, learned counsel for all the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent authorities to consider his application dated 19.03.2024 under the OTS scheme. The documents appended to the writ petition discloses that a demand notice was issued by the respondent bank on 11.08.2021, wherein it has been mentioned that the loan account of the petitioner was classified as non-performing asset since 28.05.2021. The petitioner was put to notice that the respondents would be invoking the provisions of SARFAESI Act in respect of his account. As the loan was not liquidated, a possession notice dated 28.10.2021 was issued under section 13(14) read with rule 8 and 9 of the SARFAESI Rules. Thereafter, the Authorized Officer of the respondents had issued a notice of intended sale dated 12.03.2024. Thereafter, the petitioner has made a request for providing one time settlement (OTS for short) vide letter dated 19.03.2024, which was sent by registered post with A/D.

3. The learned counsel for the petitioner has referred to the statement of account to project that the outstanding due amount was Rs.8,30,407/- which was demanded from the petitioner but the payable balance as on 06.03.2023 was Rs.4,53,819.11.

4. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of *North Eastern India Trust for Education and Development (NEIT-ED) (M/s.) Shillong v Union of India, 2012 (4) GLT 146*, claiming that as the value of the secured asset was more than the money claimed by the respondents, the OTS is required to be considered and that till the application for OTS is disposed of there should be no recovery of the outstanding dues against the petitioner.

5. In the case in hand, we find that it is after issuance of the notice of intended sale dated 12.03.2024, the petitioner has made an offer for OTS. In the meanwhile, the loan account is already a non-performing asset and once the respondent banks have invoked the provisions of SARFAESI Act and Rules thereunder and has issued demand notice for the same, the petitioner has an alternative remedy of approaching the jurisdictional Debts Recovery Tribunal under the provisions of section 17 of the SARFAESI Act and it would be open to the petitioner to raise the issue relating to non-consideration of the OTS.

6. The Court is also inclined to refer to the decision of the Supreme Court of India in the case of *S. Karthik & Ors. v N. Subhash Chand Jain & Ors., (2022)*

10 SCC 641, wherein by referring to various provision of SARFAESI Act and Rules framed thereunder as well as Transfer of Property Act, 1882 it has been held that the secured creditor cannot affect sale or transfer of secured assets which creates right of redemption. Therefore, even if sale is made, the right of redemption will still be available subject to the payment of all the dues. This would be a further alternative remedy available to the petitioner.

7. Moreover, the Supreme Court of India in the case of *Authorized Officer, State Bank of Travancore & Anr. v Mathew K.C., (2018) 3 SCC 85*, has held that the jurisdiction under Article 226 of the Constitution of India should be exercised judiciously and in accordance with law and normally should not be exercised with alternative remedies available. Para-16, 17, 18 and 19 are quoted below:

“16. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in [Satyawati Tandon](#) (supra), has also not been kept in mind before passing the impugned interim order:-

“46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the

High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation.

Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in [Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad](#), [Whirlpool Corpn. v. Registrar of Trade Marks](#) and [Harbanslal Sahnia v. Indian Oil Corpn. Ltd.](#) and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.

18. We cannot help but disapprove the approach of the High Court for reasons already noticed in [Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works \(P\) Ltd. and Another](#), 1997 (6) SCC 450, observing :-

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

19. The impugned orders are therefore contrary to the law [laid down by](#) this Court under [Article 141](#) of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.”

8. In view of the aforesaid judgment in the case of *Mathew K.C. (supra)*, the judgment in the case of *North Eastern India Trust for Education and Development (NEIT-ED) (supra)*, cannot be followed as the decision of the Supreme Court of India would have more persuasive value.

9. In view of the alternative remedy available, this Court declines to invoke jurisdiction under Article 226 of the Constitution of India.

10. Accordingly, this writ petition stands dismissed at the motion stage without issuing notice upon the respondents.

JUDGE

Comparing Assistant