

GAHC010082962024



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

Case No. : CRP(IO)/134/2024

KAMOLI BARUA AND 3 ORS
WIFE OF LATE AMBIKA BARUA,
RESIDENT OF H. NO. 4, BYE LANE NO.- 8,
PADMA PATH, ZOO ROAD TINIALI,
R.G. BARUA ROAD, GUWAHATI- 781024,
DISTRICT- KAMRUP(M), ASSAM
AND PRESENTLY RESIDING AT ASTAMI-1802, UPOHAR LUXURY
COMPLEX,
CHAKGARIA, KOLKATA- 700094, WEST BENGAL.

2: RUPALI BARUA
DAUGHTER OF LATE AMBIKA BARUA

RESIDENT OF H. NO. 4
BYE LANE NO.- 8

PADMA PATH
ZOO ROAD TINIALI

R.G. BARUA ROAD
GUWAHATI- 781024

DISTRICT- KAMRUP(M)
ASSAM

3: MEGHALI BARUA LAHIRY
DAUGHTER OF LATE AMBIKA BARUA

RESIDENT OF H. NO. 4
BYE LANE NO.- 8

PADMA PATH
ZOO ROAD TINIALI

R.G. BARUA ROAD
GUWAHATI- 781024

DISTRICT- KAMRUP(M)
ASSAM

4: ANINDA BARUAH
SON OF LATE AMBIKA BARUA

RESIDENT OF H. NO. 4
BYE LANE NO.- 8

PADMA PATH
ZOO ROAD TINIALI

R.G. BARUA ROAD
GUWAHATI- 781024

DISTRICT- KAMRUP(M)
ASSAM
AND PRESENTLY RESIDING AT 12 HOLLY AVENUE
CHEADLE
CHESHIRE

MANCHESTER
SK8 1EP
UNITED KINGDOM

VERSUS

THE NORTH EAST DEVELOPMENT FINANCIAL CORPORATION LTD
(NEDFI)
NEDFI HOUSE, G.S. ROAD, DISPUR,
GUWAHATI- 781006.

For the Petitioner(s) : Mr. O. P. Bhati, Advocate

For the Respondent(s) : Mr. G. Das, Advocate

Date of Hearing : 26.04.2024

Date of Judgment : 26.04.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. O. P. Bhati, the learned counsel appearing on behalf of the Petitioners and Mr. G. Das, the learned counsel appearing on behalf of the Respondent.

2. The instant application under Article 227 of the Constitution has been filed challenging the order dated 13.03.2024 passed by the Debts Recovery Tribunal, Guwahati in MA No.163/2023 arising out of Original Application No.244/2014.

3. The brief facts leading to the filing of the instant application are that the Respondent herein had filed an Original Application No.244/2014 seeking recovery of an amount of Rs.3,80,39,645/- along with pendent lite and future interest at contractual rates till realization. The Petitioners herein are the successor-in-interest of the Defendant No.7 in the said proceedings. The Defendant Nos. 1, 2, 4, 5 and 7 though participated in the said proceedings before the learned Debts Recovery Tribunal, Guwahati but did not file their written statement. However, the Defendant Nos. 3 and 6 had contested the claim of the Respondent Bank by filing written statement. The learned Debts Recovery Tribunal, Guwahati, vide a judgment dated 07.09.2016 decided the said Original Application in favour of the Respondent herein who was the applicant in the said proceedings and issued Recovery Certificate to the tune of Rs.3,80,39,645/- together with pendent lite and future interest @13% per annum till realization of the amount along with the cost of the application. The charge on the various properties which were a part of the application

was kept alive till the full and final realization of the amount.

4. The Petitioners herein who are the successor-in-interest of the Defendant No.7 in the said proceedings filed an application in the year 2023 which was registered and numbered as Misc. Application No.163/2023 stating inter alia that their predecessor-in-interest ought not to have been made liable in absence of a personal guarantee having been executed by the predecessor-in-interest of the Petitioners and their liability was limited only to the sale proceeds of the mortgaged property. Pursuant to the said application so filed, the Respondent herein filed objections opposing the said application vehemently. In the said objections, it was duly mentioned that the said Application has been filed only to delay and/or stop the recovery proceedings after necessary directions were issued by the learned Recovery Officer on 11.07.2023 to the legal heirs of Late Ambika Barua to disclose their property details. It was also mentioned that the Petitioners herein had duly approached the learned Recovery Officer for alteration/modification of the order dated 11.07.2023 which was however rejected vide an order dated 19.09.2023. It was further mentioned that after a period of 6 (six) years from the date of the judgment passed in the said Original Application, the application was filed seeking modification/alteration/correction of the judgment dated 07.09.2016 passed in O.A. No.244/2014 with a sole object of obstructing the recovery proceedings.

5. The learned Presiding Officer, Debts Recovery Tribunal, Guwahati, vide the impugned order dated 13.03.2024 rejected the said application filed by the Petitioners and it is under such circumstances, the instant application has been filed invoking the superintending power of this Court under Article

227 of the Constitution.

6. I have heard Mr. O.P. Bhati, the learned counsel appearing on behalf of the Petitioners and Mr. G. Das, the learned counsel appearing on behalf of the Respondent and have duly taken note of their submissions.

7. Mr. O. P. Bhati, the learned counsel submitted that the predecessor-in-interest of the Petitioners never furnished any personal guarantee and as such the judgment passed in the Original Application dated 07.09.2016 was a mistake being committed by the learned Debts Recovery Tribunal, Guwahati, and as such, the mistake ought to have been corrected as it was on account of the fault of the learned Debts Recovery Tribunal, Guwahati that the Petitioners are now facing difficulties. The learned counsel further referred to the judgment of the Supreme Court in the case of ***HDFC Bank Ltd. and Others Vs. Union of India and Others reported in (2023) 5 SCC 627*** and submitted that the Court in view of the principle of *Ex debito justitiae* can reconsider a decision even if the said decision have attained finality and if the said decision is a result of a mistake of the Court. In that regard, he specifically referred to paragraph Nos. 30 and 32 of the said judgment.

8. On the other hand, the learned counsel appearing on behalf of the Respondent submitted that the application which was filed almost after 6 (six) years from the passing of the judgment that too in a case where the predecessor-in-interest have duly participated in the said proceedings and did not submit a written statement is nothing but a ploy by the Petitioners for an on behalf of themselves as well as the other certificate debtors to delay and stall the recovery proceedings. He submitted that the said

judgment passed by the learned Debts Recovery Tribunal, Guwahati could have been very well challenged before the appropriate forum as is visualized in the Recovery of Debts and Bankruptcy Act, 1993 (for short "the Act of 1993") and having not done so, now after a period of 6 (six) years to file that application that too assailing the said judgment on certain facts was not at all maintainable for which the learned Debts Recovery Tribunal, Guwahati was justified in rejecting the said application. He further submitted that the judgment so referred to by the learned counsel for the Petitioners cannot be applied to the facts of the instant case taking into account that the judgment was rendered in some different facts which has no application to the present facts.

9. Upon hearing the learned counsels for the parties and giving anxious consideration to the matter, it would be seen that the Defendant No.7 in the original proceedings was the predecessor-in-interest of the Petitioners herein. The judgment so passed by the learned Debts Recovery Tribunal, Guwahati on 07.06.2016 categorically holds that all the Defendants except the Defendant Nos. 3 and 6 filed their written statement. The said judgment also reveals that the Defendant No.7 who was the predecessor-in-interest of the Petitioners had also participated in the said proceedings but did not submit the written statement. Under such circumstances, the learned Debts Recovery Tribunal, Guwahati have duly taken note of the various materials on record and have passed the judgment on 07.09.2016 thereby allowing the said application filed by the Respondent Bank herein. It would be further apparent that the predecessor-in-interest of the Petitioners very well knew about the said judgment passed by the learned Debts Recovery Tribunal, Guwahati on 07.09.2016 and did not assail the same during his lifetime.

After 6 (six) years therefrom, the application was filed by the successor-in-interest of the Defendant No.7 i.e. the Petitioners herein alleging that a mistake was committed by the learned Debts Recovery Tribunal, Guwahati in passing the impugned judgment dated 07.09.2016.

10. This Court finds it very pertinent at this stage to mention that a mistake committed by the Court cannot be equated to an erroneous judgment being passed by the Court. It is settled law that a judgment passed erroneously by a Court, competent to decide, would be binding amongst the parties unless set aside by the Appellate Forum as provided under law. This Court at this stage finds it very relevant to take note of that a mistake of a Court has to be understood to be a mistake by the Court and on account of such a mistake there has been a prejudice caused to a party. The same as already been stated above cannot be equated to an erroneous judgment. The term mistake of the Court is based upon the settled principle *actus curiae neminem gravabit* i.e. no act on the part of the Court should prejudice a party. In the instant case, if this Court takes note of the facts as already delineated hereinabove, it would be seen that the predecessor-in-interest of the Petitioners herein did not participate in the said proceedings before the learned Debts Recovery Tribunal, Guwahati by filing written statement or clarifying their stand. The learned Debts Recovery Tribunal, Guwahati had on the basis of the materials on record passed the judgment dated 07.09.2016. Under such circumstances, the said cannot by any stretch of imagination be said to be a mistake committed by the Court thereby prejudicing the Petitioners or their predecessor-in-interest.

11. At this stage, if this Court now takes note of the judgment of the

Supreme Court in ***HDFC Bank Ltd. (supra)***, it would be seen that the said judgment was rendered in respect to a reconsideration of a judgment passed in another case on the principle that merely because a judgment has been pronounced by the Supreme Court, the same cannot be said that it cannot be reconsidered. In the opinion of this Court, the said judgment does not apply to the facts of the instant case. Accordingly, this Court finds no merit in the instant application for which the same stands dismissed.

12. It is however observed that the dismissal of the instant application shall not prejudice the Petitioners to avail such other remedies, if otherwise permissible under law.

JUDGE

Comparing Assistant