

GAHC010212382023



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

Case No. : WP(C)/5513/2023

DIPIKA SHARMA AND ANR.
W/O- SRI PRAFULLA SHARMA,
HOUSE NO. 44, JANAPATH, NORTH JYOTINAGAR,
VILLAGE - RAMASAHIL,
GUWAHATI- 781021, ASSAM.

2: PRAFULLA SHARMA
S/O- RABI CHANDRA SHARMA

HOUSE NO. 44
JANAPATH
NORTH JYOTINAGAR

VILLAGE - RAMASAHIL

GUWAHATI- 781021
ASSAM

VERSUS

INDIAN BANK AND ORS.
ERSTWHILE ALLAHABAD BANK,
SRCB ROAD, FANCY BAZAR,
GUWAHATI, ASSAM- 781001.

2:M/S NECT GROUP OF INSTITUTIONS
PROPRIETOR MR. TILOK DAS

GITA NAGAR
OPPOSITE GITANAGAR HIGH SCHOOL

MOTHER TERESA ROAD

GUWAHATI- 781024.

3:TILOK DAS
S/O- LATE SAMBHU RAM DAS

FLAT NO. 5D
5TH FLOOR

BARUAH ENCLAVE
MOTHER TERESA ROAD

HATIGARH CHARIALI
GUWAHATI- 781024

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : SC, INDIAN BANK

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 31/05/2024
Vijay Bishnoi, CJ

Heard Mr. S. Sarma, learned counsel for the petitioners. We have also heard Mr. M. Sarma, learned counsel appearing for the respondent bank.

This writ petition is filed by the petitioners essentially challenging the intended sale dated 02/09/2023 initiated by the respondent no.1 bank under Rule 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002 under the SARFAESI Act, 2002.

The petitioners have contended in this petition that the respondent no. 2 M/s. NECT Group of Institutions is a borrower of the respondent no.1 Indian Bank and has availed loan facility from the said bank. The House No. 44 situated in village Ramsa Hills, North Jyotinagar, guwahati, was mortgaged with the bank against the loan advanced to the respondent no. 2. It is contended that when the respondent no. 2 has failed to pay the outstanding dues of the Bank, proceedings under section 13(2) of the SARFAESI Act was initiated, which followed by taking symbolic possession of the property in question under section 13(4) of the SARFAESI Act.

It is the case of the petitioners that they have submitted a proposal for One Time Settlement

(OTS) to the bank and pursuant to that they have paid an amount of Rs. 50 lakhs but despite the same, the Bank is initiating process for auctioning the property, in question. A dispute regarding outstanding amount has also been raised in this petition.

The stand of the respondent bank is that though once the petitioners had approached the Bank under the OTS scheme, the Bank and the petitioners have reached at an agreement that the petitioners will pay the outstanding dues in installments. However, after paying some installments, the petitioners have not paid the remaining installments. Then again the proceedings have been initiated for auction of the property in question. There is serious dispute about the due amount between the petitioners and the respondent Bank.

We are of the view that by exercising jurisdiction under Article 226 of the Constitution of India, this Court is not supposed to adjudicate the dispute regarding the due amount between the petitioners and the respondent Bank. However, this Court has granted indulgence taking into consideration the fact that both the petitioners are suffering from Malignancy and in such circumstances, while taking a sympathetic view we had granted opportunity to the petitioners and the respondent Bank to solve the dispute by arriving at an amicable settlement.

Taking into consideration the above facts of the case, we are of the opinion that 1(one) month time be granted to the petitioners and the respondent Bank to settle their dispute, with an expectation, that the respondent Bank shall take a sympathetic view in the matter looking to the medical condition of the petitioners.

If any settlement is arrived at between the parties within the stipulated time, the parties shall abide by the said agreement. However, if no settlement is arrived, the respondent Bank is free to take recourse, in accordance with law.

With the above observations, this writ petition stand disposed of.

JUDGE

CHIEF JUSTICE

sukhamay

Comparing Assistant