

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.779 of 2024

1. Smt. Uma Bhattacharjee,

W/o Lt. Chitta Ranjan Bhattacharjee,
Aged about-69 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

2. Sri Pallab Bhattacharjee,

S/o Lt. Chitta Ranjan Bhattacharjee,
Aged about-43 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

3. Sri Pulak Bhattacharjee,

S/o Lt. Chitta Ranjan Bhattacharjee,
Aged about-40 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

4. Smt. Bina Bhattacharjee,

W/o Lt. Dipak Ranjan Bhattacharjee,
Aged about-62 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

5. Sri Dipankar Bhattacharjee,

S/o Lt. Dipak Ranjan Bhattacharjee,
Aged about-35 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

6. Sri Pranab Bhattacharjee,

S/o Lt. Dipak Ranjan Bhattacharjee,
Aged about-32 years,
R/o 23, Nivedita Palli, Ramnagar Road No.8,
PO-Ramnagar, PS-West Agartala, Sub-Division-Agartala,
District-West Tripura, Pin-799002.

7. Smt. Kana Bhattacharjee,

W/o Haridhan Sarkar,
D/o Lt. Jogeswar Bhattacharjee,
Aged about-62 years,

R/o Malaynagar, PO-Renters' Colony,
PS-Srinagar, Sub-Division-Agartala,
District-West Tripura, Pin-799004.

8. Smt. Hena Chakraborty,
W/o Sri Makhan Chakraborty,
D/o Lt. Jogeswar Bhattacharjee,
Aged about-58 years,
R/o Malaynagar, PO-Renters' Colony, PS-Srinagar,
Sub-Division-Agartala, District-West Tripura, Pin-799004.

9. Smt. Rina Bhattacharjee,
W/o Lt. Pramata Chakraborty,
D/o Lt. Jogeswar Bhattacharjee,
Aged about-60 years,
R/o West Pratapgarh Kabiraj Tilla,
PO+PS- A.D. Nagar, Sub-Division-Agartala,
District-West Tripura, Pin-799003.

..... Petitioner(s)

V E R S U S

1. Tripura Gramin Bank,
Having its Head Office at Abhaynagar,
Agartala, District-West Tripura, Pin-799005,
Represented by its Chairman.

2. The Authorised Officer,
Tripura Gramin Bank, New Kunjaban Township Branch,
New Kunjaban Township, Indranagar,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District-West Tripura, Pin-799006.

3. The Branch Manager,
Tripura Gramin Bank, New Kunjaban Township Branch,
New Kunjaban Township, Indranagar,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District-West Tripura, Pin-799006.

4. Smt. Chandra Das Acharjee,
W/o Sri Alok Kumar Das,
R/o 79, Tilla, Saradapalli,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District-West Tripura, Pin-799006.

5. Sri Alok Kumar Das,
S/o Lt. Anil Chandra Das,
R/o 79, Tilla, Saradapalli,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District-West Tripura, Pin-799006.

6. Smt. Debamita Chakraborty,
W/o Sri Tarak Kumar Das,
R/o 79, Tilla, Saradapalli,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District-West Tripura, Pin-799006.

..... Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Advocate.

For Respondent(s) : Mr. P. Saha, Advocate.

Date of hearing and delivery : **21st January, 2025.**
of judgment & order

Whether fit for reporting : **NO.**

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Lodh, learned counsel appearing for the petitioners
and Mr. P. Saha, learned counsel appearing for the respondents-Bank.

2. Petitioners came rushing to this Court alleging a fixation of possession notice under Section 13(4) read with Rule 8(1) in Appendix IV of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the '*Act of 2002*'), by the respondents-Bank on 05.11.2024 (Annexure-10). Petitioners case is based upon the averments that they are neither the borrower nor the guarantor of the alleged assets said to have been mortgaged by respondent No.4, as projecting herself as the owner of the property. Respondents No.5 and 6 have stood as personal guarantors. According to the petitioners, the property described in the possession notice stood purchased by the predecessor-in-interest, namely, Amiya Bhattacharjee from the predecessor-in-interest of the respondent No.4, namely, Prangopal Acharjee by registered Sale Deed dated 05.04.1985. The

mortgage of the said property for house building loan taken from her employer, State of Tripura, was repudiated in 2015 by the petitioner, specifically, Dipak Ranjan Bhattacharjee (now deceased). After repudiation of the loan the employer reconveyed said property in the name of the petitioners, who are the legal heirs of the deceased, Dipak Ranjan Bhattacharjee also apart from the original owner, Amiya Bhattacharjee. However, private respondents behind the back of the petitioners mortgaged the said property claiming themselves to be the owner to the respondents-Bank. The present possession notice has been issued in the SARFAESI proceedings against the loan taken by respondent No.4, which has become a non-performing asset. The petitioners are completely unaware of any such mortgage by the private respondents. They have been taken aback by the possession notice, and therefore, compelled to approach this Court in Writ Jurisdiction.

3. The matter was taken up earlier on 17.12.2024. Learned counsel for the respondents-Bank, Mr. P. Saha, was asked to take instructions and file a counter affidavit. A counter affidavit has been filed by them, *inter-alia*, taking a stand that before sanctioning the loan on 26.09.2018 (Annexure-R/1), the Bank had caused search of the mortgaged property with the Sub-Registrar Office, Sadar. The empanelled lawyer, after proper search, issued a search and Non-Encumbrance Certificate in respect of the property of respondent No.4, mentioning that it is fit for equitable mortgage. The mortgage, if created, will be perfect and available to the Bank for enforcement against the liability of the intending borrower/mortgagor, Smt. Chandra Acharjee(Das), i.e., respondent No.4. The respondents-Bank, on the basis of the Non-Encumbrance Certificate dated 25.09.2018 issued on the basis of original

Registered Partition Deed No.I-6942 dated 23.06.2016, along with Khatian No.2030 of respondent No.4, created an equitable mortgage on her property as the First Party of the said deed belongs to property under first schedule, bounded by the North-Dipali Acharjee, by the South-Government Road, by the East-Land of Second Party, by the Western side-Swaraswati Debnath. Respondent No.4 also deposited the said Deed with the respondents-Bank, along with the Khatian vide No.2030, under Mouza Agartala Sheet No.2, Sub-Division-Sadar, Tahashil-Ramnagar, Revenue Circle-Agartala, corresponding to Hal Dag No.744/3298, Sabek Dag No.PB-433-1128/85003(P), measuring 0.0550 acre in the name of Smt. Chandra Acharjee(Das), i.e., the Respondent No.4 herein. Based on the said deed and Khatian, the answering-Bank has created the mortgage by issuing Mortgage Memo on the land and building, bearing No.1280/18. At the time of inspection by the Bank, the photograph of respondent No.4 was also taken with the mortgage property to prove that she is the owner of the mortgaged property along with possessory rights. Learned counsel for the respondents-Bank further submits that the respondent No.4 has instituted a Title Suit No.34 of 2020, for recovery of possession against the petitioner No.1 of the same property. It is submitted that the respondents-Bank, after following the procedure prescribed under Section 13(2) of the Act of 2002 issued a possession notice by invoking the power under Section 13(4) of the Act, which is in accordance with the law. The claim of the petitioners regarding ownership and possession over the property is not an admitted state of facts as the Bank has sanctioned the loan in favour of respondent No.4 on the basis of the Non-Encumbrance Certificate issued by its empanelled lawyer after undertaking search for the last 13 years in the Sub-Registrar Office, Sadar

from 2006-2018. The respondent No.4 and petitioner No.1 are also agitating in a title suit over the claim of recovery of possession of the said property. In those circumstances, the claims of the petitioners are in the realm of the disputed questions of fact and actions taken under Section 13(4) of the Act of 2002, are not open to challenge in Writ Jurisdiction when the Act provides for statutory remedy before the Debts Recovery Tribunal (DRT), under Section 17 of the Act. Therefore, this Court may not interfere in the matter.

4. Learned counsel for the petitioners, in reply, has reiterated that the documents, such as sale deed and re-conveyance deed enclosed by the petitioner, are not disputed by the respondents-Bank. The respondents-Bank, without undertaking proper inquiry and due diligence, has sanctioned a loan in favour of respondent No.4, though the property in question is in ownership and possession of the present petitioner. Section 13(2) notice has not been issued upon the petitioners. The property in question is in possession of the present petitioners. The intent and spirit of the Act of 2002 would be defeated if the respondents-Bank is allowed to recover the loan through auction of the property owned by the petitioners. In such circumstances, the resort to statutory remedy can be dispensed with. Therefore, the petitioners pray for adequate relief.

5. We have considered the submissions of the learned counsel for both the parties and taken note of the relevant material facts and the documents placed from record. The stand of the petitioners and the respondents-Bank recorded hereinabove, do not convey that the issue before this Court is in the realm of admitted questions of fact, since, on the one hand, the petitioners are claiming the property through a Sale Deed of 1985 and a

re-conveyance deed executed by the State of Tripura in their favour in 2015, whereas, the Bank, on its part has on the basis of loan application after undertaking due inquiry from the Sub-Registrar Office, Sadar found that the property in question is recorded in a partition deed in favour of respondent No.4 and the Khatian record also reflects the same. Moreover, the petitioners have not produced any copy of mutation papers to show that the possession lies with them. Apart from the above, respondent No.4 and petitioner No.1 are litigating on the question of recovery of possession of the same property in a title suit. In these circumstances, following the ratio rendered by the Apex Court in the case of *United Bank of India v. Satyawati Tondon & Ors.*, reported in (2010) 8 SCC 110, and also in the case of *Celir LLP v. Bafna Motors (Mumbai) Private Limited & Ors.*, reported in (2024) 2 SCC 1, it would be ill-advised to entertain a writ petition on such disputed questions of fact.

6. The Act of 2002 provides a statutory remedy for an aggrieved person, if any action is being taken under Section 13(4) of the Act of 2002. Petitioner, therefore, is not without adequate remedy. The DRT would be the competent forum to decide the claim of the parties on such questions of fact and the law applicable. Therefore, we are not inclined to interfere in the matter. However, in the state of facts noted above as per the stand of the respondents-Bank, that the petitioners are neither the borrower nor the guarantor of the said property, the petitioners are allowed liberty to approach the learned DRT having jurisdiction over the subject matter. If the petitioners herein approach the learned DRT within a period of 3(three) weeks from today, the respondents-Bank would not take any coercive steps against the

petitioners. However, if the petitioners fail to file any statutory application under Section 17 of the SARFAESI Act, 2002, within the aforesaid time, the interim order shall stand vacated. The petitioners are thereafter at liberty to seek interim relief from the concerned DRT which may be considered on its own merits uninfluenced by any observation made this Court.

The petition is disposed of accordingly.

Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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