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

Case No. : WP(C)/4574/2025

CANARA BANK
A GOVERNMENT OF INDIA UNDERTAKING CARRYING ON BANKING BUSINESS UNDER LICENSE GRANTED BY RESERVE BANK OF INDIA AND REGISTERED UNDER BANKING REGULATION ACT, 1949, HAVING ITS REGISTERED HEAD OFFICE AT BUILDING NO. 112, J.C. ROAD, BENGALURU-560002 AND HAVING ONE OF ITS BRANCH OFFICE AT SPLSD ASSET RECOVERY MANAGEMENT BRANCH, 2ND FLOOR, DEE BEE GRANDE, PANJABARI ROAD, GUWAHATI, KAMRUP(M), ASSAM-781022 AS WELL AS ITS BRANCH OFFICE AT SPECIALISED ARM BRANCH, DHEMAJI BRANCH, DHEMAJI, ASSAM AND IS REPRESENTED BY SHRI KUNAL GAUTAM, CHIEF MANAGER, CANARA BANK, ARM BRANCH, GUWAHATI, SON OF R P SINGH, R/O- CANARA BANK OFFICERS, QUARTER, BHANGAGARH, GUWAHATI.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, REVENUE DEPARTMENT, GUWAHATI, KAMRUP METRO, ASSAM-781006.

2:THE DISTRICT COMMISSIONER-CUM-DISTRICT MAGISTRATE
OFFICE OF THE DISTRICT COMMISSIONER
DHEMAJI
DIST. DHEMAJI
ASSAM-787057 (BAKIJAI BRANCH).

3:THE ADDITIONAL DISTRICT COMMISSIONER-CUM- ADDITIONAL DISTRICT MAGISTRATE
OFFICE OF THE DISTRICT COMMISSIONER
DHEMAJI
DIST.- DHEMAJI
ASSAM

PIN- 787057 (BAKIJAI BRANCH).

4:SONTOSH KUMAR PRASAD
(BORROWER)
SON OF HARE KRISHNA PRASAD
R/O- VILL.- CHAUL DHOWA BALI
MOUZA- BORDOLONI
P.S. GOGAMUKH
DIST. DHEMAJI
ASSAM-787034.

5:PUNJAB NATIONAL BANK
REPRESENTED BY ITS BRANCH MANAGER
MINGMANG BRANCH
GOGAMUKH
DIST. DHEMAJI
ASSAM-787034.

6:PINKY SHARMA
(AUCTION PURCHASER)
W/O GOPAL SHARMA
R/O D.K. ROAD
NEAR GOGAMUKH COLLEGE ROAD
NO.1 GOGAMUKH
SUBANSIRI PART-II
GOGAMUKH
DHEMAJI
ASSAM
PIN-78703

For the petitioner : Mr. M. Sharma, Advocate

For the respondents : Ms. N. Bordoloi, S.C., Revenue for
Respondent No.1
Mr. S. Baruah,
Jr. Govt. Advocate, Assam for
Respondent Nos.2 and 3
Mr. A. Ganguly, Advocate for
Respondent No.5
Mr. S.D. Roy, Advocate for
Respondent No.6.

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

02-11-2026

(Ashutosh Kumar, C.J.)

We have heard Mr. M. Sharma, learned Advocate for the petitioner/Canara Bank; Ms. N. Bordoloi, learned Standing Counsel, Revenue for the respondent No.1; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent Nos.2 and 3; Mr. A. Ganguly, learned Advocate for the pro-forma respondent No.5/Punjab National Bank and Mr. S.D. Roy, learned Advocate for the pro-forma respondent No.6.

2. The petitioner/Canara Bank, a government of India undertaking, licensed by the Reserve Bank of India and operating with nationwide branches, including one in Guwahati, Assam, sanctioned a loan of Rs.25 lakhs to the borrower/pro-forma respondent No.4, secured by an equitable mortgage of a plot of land in Dhemaji district of Assam. The borrower failed to repay the loan despite of the reminders, leaving the petitioner/Canara Bank to classify the account as Non-performing Assets (NPA) in March, 2021. To recover the dues, the petitioner/Canara Bank invoked the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (hereinafter to be referred as 'SARFAESI Act') and issued demand notice under Section 13(2) of the SARFAESI Act requiring repayment within 60 days. This was followed by possession notice under Section 13(4) after the borrower's

default. In February, 2024, the petitioner/Canara Bank applied to the District Magistrate, Dhemaji under Section 14 of the SARFAESI Act for assistance in taking physical possession of the secured property.

3. The afore-noted application under Section 14 of the SARFAESI Act was disposed off by the District Magistrate, Dhemaji vide order dated 14.08.2024 authorising the petitioner/Canara Bank to take physical possession of the property. Accordingly, the petitioner/Canara Bank took physical possession of the property and auctioned the property to the pro-forma respondent No.6.

4. The sale proceeds were adjusted against the dues.

5. However, the Punjab National Bank/pro-forma respondent No.5 communicated to the District Magistrate, Dhemaji vide its letter dated 24.03.2025 that the borrower, Sontosh Kumar Prasad had also availed a loan of Rs.17 lakhs from the Punjab National Bank in the year 2019, which loan too was secured by the same property which was hypothecated in favour of the petitioner/Canara Bank. Under such circumstances, a request was made by the Punjab National Bank to the District Magistrate, Dhemaji for staying the order dated 14.08.2024 and also to refrain from passing any order authorising the petitioner/Canara Bank to take over the possession of the property so as to protect the interest of the Punjab National Bank. The District Magistrate, on receipt of such request by Punjab National Bank, passed an order of stay on its own previous order but in the absence of the petitioner/Canara Bank.

6. The District Magistrate, thereafter, passed another order directing both the Punjab National Bank and the Canara Bank to approach the

competent authority under the SARFAESI Act for resolution of the dispute and simultaneously instructed the Circle Officer to hold in abeyance the process of correction/mutation of the land records in favour of the auction purchaser, namely, Pinky Sharma.

7. Such order of the District Magistrate has been challenged in this petition as violative of principle of natural justice and the order exceeding the powers vested in the District Magistrate under Section 14 of the SARFAESI Act.

8. The contention of the petitioner/Canara Bank is that once an order authorising/facilitating the taking over of physical possession of the property in question, is passed, the District Magistrate becomes *functus officio*.

9. Mr. A. Ganguly, learned Advocate representing the Punjab National Bank, however, submits that the property in question had been encumbered in favour of the Punjab National Bank much before the loan was advanced to the borrower, Sontosh Kumar Prasad by the petitioner/Canara Bank and even by simple process of evaluation/scrutiny of the documents furnished by the borrower, it would have become known that the property in question, which was being offered to the Canara Bank as collateral security, had already been encumbered with the Punjab National Bank. Even otherwise, when an application was filed by the Punjab National Bank before the District Magistrate intimating about the loan availed by the borrower from the Punjab National Bank, the process of auction sale was mischievously expedited and the sale was confirmed.

10. Both the banks (the Canara Bank and Punjab National Bank), however, emphasise that everything was done in good faith and as per the procedures prescribed under the SARFAESI Act.

11. In the preliminary hearing of the matter, this Court vide order dated 19.08.2025 had issued notice to the Punjab National Bank and to the auction purchaser as also passed an order continuing the stay granted by the District Magistrate on its own order authorising the possession of the property in question. Since the property had already been auction sold in favour of the pro-forma respondent No.6, namely, Pinky Sharma, the Circle Officer, as noted above, was directed to hold in abeyance the process of record correction/mutation in favour of Pinky Sharma.

12. Mr. S.D. Roy, learned Advocate for the auction purchaser/Pinky Sharma, however, submits that the auction purchaser did not have any means to know all these facts and that the purchase was *bona fide* for a consideration. It would be breach of her rights under Article 300 of the Constitution of India if she is not permitted to have the property mutated in her name and enjoy the possession thereof.

13. Under such circumstances, this Court is of the view that the provisions contained in Section 11 of the SARFAESI Act is required to be invoked.

14. Section 11 of the Act provides that where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank, or financial institution, or [asset reconstruction company] or [qualified buyer], such dispute shall be settled by conciliation or arbitration as

provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

15. In ***Bank of India vs. Sri Nangli Rice Mills Private Limited and others, (2025) 9 SCC 225***, it has categorically been held by the Supreme Court that Section 11 of the SARFAESI Act deals with resolution of disputes between the parties and in order to attract the provision of Section 11, twin conditions must be fulfilled: which are (i) the dispute must be between any bank or financial institution or asset reconstruction company or qualified buyer; and (ii) the dispute must relate to securitisation or reconstruction or non-payment of any amount due including interest. It was adumbrated further that when the aforesaid two conditions prima facie are satisfied, then no jurisdiction will lie with the Debts Recovery Tribunal and the proper recourse would only be through Section 11 of the SARFAESI Act read with the Arbitration and Conciliation Act, 1996, referred to above.

16. In ***Bank of India (supra),*** it was further held that the expression "non-payment of any amount due, including interest" in Section 11 of the SARFAESI Act would include all disputes connected to unpaid amounts, including those arising because of third party default such as any default of the borrowers.

17. In case of any dispute between two banks, financial institutions, asset reconstruction companies or qualified buyers, etc., where jural relationship between the two was of a lender and borrower, then Section

11 of the SARFAESI Act would have no application whatsoever.

18. Thus, Section 11 of the SARFAESI Act provides for a statutory arbitration for any dispute mentioned therein between any of the parties as enumerated thereunder, which does not require any explicit written agreement for arbitration for attracting the provisions of Section 11 of the SARFAESI Act. By deeming fiction of law, it is to be treated as an agreement between the parties, subjecting themselves to arbitration. The arbitration contemplated under Section 11 of the SARFAESI Act is mandatory in nature for the use of the word "shall" therein.

19. Thus, no other recourse to any of the parties is available, except arbitration.

20. Thus, we dispose off this writ petition with a direction to the parties to go for an arbitration by invoking the provisions contained in Section 11 of the SARFAESI Act.

21. However, we clarify that, in the meantime, it would be open for the auction purchaser/pro-forma respondent No.6 to have her name mutated in revenue records, keeping in mind her rights and entitlements but subject to the condition that no third-party interest shall be created on the property without fully disclosing the afore-noted facts, failing which, it shall be read against the pro-forma respondent No.6 in any proceeding hereinafter.

22. To that extent, the order dated 24.03.2025 passed by the District Magistrate, Dhemaji staying its earlier order, is set aside.

23. We also deem it necessary to indicate that all the issues relating to

the facts and law shall remain open to be agitated in the arbitral proceedings.

The writ petition stands disposed off accordingly.

JUDGE **CHIEF JUSTICE**

Comparing Assistant