GAHC010216252026

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

Case No. : CRP(IO)/504/2026

M/S MAA SERVICE STATION AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AND PRINCIPAL PLACE OF BUSINESS AT GOSAIBARI, NAGAON, ASSAM- 782446,REPRESENTED BY ITS PROPRIETOR, SMTI PURABI MAHANTA

2: SMTI. PURABI MAHANTA
W/O SHRI DEBOJIT MAHANTA
PROPRIETOR OF PETITIONER NO. 1
R/O TELLIAPATTI
HAIBARGAON
NAGAON- 782002

VERSUS

BANK OF BARODA AND 2 ORS.
A BODY CORPORATE (NATIONALISED BANK) CONSTITUTED UNDER THE BANKING COMPANIES ACQUISITION AND TRANSFER OF UNDERTAKINGS ACT, 1970. HAVING ITS HEAD OFFICE AT MANDVI, BARODA AND CORPORATE OFFICE BARODA CORPORATE SECTOR, PLOT NO. C-26, BLOCK-G, KURLA COMPLEX, BANDRA EAST, MUMBAI- 400051, REPRESENTED BY ITS MANAGING DIRECTOR AND THE CHIEF EXECUTIVE OFFICER

2:THE CHIEF MANAGER CUM AUTHORIZED OFFICER
BANK OF BARODA
HAVING ITS OFFICE AND PRINCIPAL PLACE OF BUSINESS AT OLD A.T. ROAD
HAIBARGAON
NAGAON- 782002.

3:THE DEBTS RECOVERY TRIBUNAL
GUWAHATI
THROUGH ITS PRESIDING OFFICER
GUWAHATI

SUWARNA BHAWAN
HOUSE NO. 12
NEW TOWN PATH
G.S. ROAD
NEAR HANUMAN MANDIR
ULUBARI
GUWAHATI- 781007
ASSAM

Advocate for the Petitioner : MR. S P ROY, MR.T YADAV,MS. V RAI,JYOTISH DAS

Advocate for the Respondent : MR B P BORAH, MISS. J GOGOI,MR P J DUTTA

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.10.2026

1. Heard Mr. S. P. Roy, the learned counsel for the petitioners. Also heard Mr. B. P. Borah, the learned counsel appearing for respondent Nos. 1 and 2.

2. Though, the Debt Recovery Tribunal, Guwahati, has also been made a party in this revision petition, however, this Court is of the considered opinion that since the order of the Debt Recovery Tribunal has been impugned in this revision petition, there is no requirement under the law to make such a *quasi-judicial* body to make a party in a proceeding under Article 227 of the Constitution of India. As such, no notice is required to be issued to the respondent No. 3.

3. This CRP(IO) has been filed by the petitioners under Article 227 of the Constitution of India, impugning the order dated 23.07.2026, passed by the Debt Recovery Tribunal, Guwahati in I.A. No. 815/2025, arising out of S.A. No. 122/2024, whereby the prayer made by the present petitioners under Order XI

Rule 21 of the Code of Civil Procedure, 1908, read with Section 19(25) and Section 22(2)(b) of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 for striking out the defense of the respondent bank for non-compliance of order dated 15.10.2025 was rejected by the Debt Recovery Tribunal, Guwahati.

4. The facts relevant for consideration of the instant CRP(IO), in brief, are that the petitioners have filed a SARFAESI application, bearing S.A. No. 122/2024, before the Debt Recovery Tribunal, Guwahati, *inter alia*, praying for a declaration that all SARFAESI actions resorted to by the respondent Nos. 1 and 2 leading up to issuance of notice under Section 13(4), dated 19.09.2024, of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") is bad in law and may be set aside.

5. Along with the aforesaid S.A. No. 122/2024, the petitioners have filed an Interlocutory Application No. 677/2024 for seeking an interim relief in the nature of stay of operation of all the SARFAESI actions resorted to by the respondent bank. The Debt Recovery Tribunal, Guwahati, by its order dated 04.10.2024, passed in the said Interlocutory Application, directed the respondent bank not to take any coercive action on the basis of possession notice issued on 19.09.2024 till filing of the objection by the respondent bank. The said stay granted by the Debt Recovery Tribunal was extended from time to time and is still operative. The respondent bank filed their written objection in the aforementioned SARFAESI application on 26.02.2025. The present petitioners on that day sought time to file their rejoinder, and the next date was fixed on 14.03.2025 for filing rejoinder. However, on 14.03.2025, the matter was adjourned and it was fixed on 24.04.2025.

6. On 24.04.2025, the learned counsel for the petitioners sought further time to file their rejoinder. However, the Debt Recovery Tribunal, Guwahati, by its order dated 24.04.2025, without affording the petitioners further chance to file their rejoinder, fixed the aforesaid SARFAESI application for hearing on 19.05.2025.

7. Mr. S. P. Roy, learned counsel for the petitioners has submitted that petitioner No. 2, who is the proprietors of petitioner No. 1-firm, have taken cash credit loan from the respondent bank of an amount of Rs.80 Lakhs. However, on examining banks statements, it came to the notice that large cash withdrawal amounting to Rs.4,70,000/- were withdrawn without authorization by the petitioners.

8. He submits that aforesaid amount was shown to have been withdrawn in cash/transfers from the bank account of the petitioners. However, the petitioners had never issued or submitted any cheques, withdrawal slips or any other instrument authorizing the aforesaid cash withdrawal before the respondent bank. He further submits that the respondent bank in the relevant bank statement did not disclose any cheque number, withdrawal slip or other particulars evidencing or authorizing such withdrawals. He also submits that the bank also failed to disclose the account number and bank details of the persons or entities to whose accounts the aforesaid amounts were illegally transferred, thereby rendering the entire transaction wholly unexplained and unsupported by any banking records.

9. The learned counsel for the petitioner further submits that under such circumstances, the petitioners had filed a title suit bearing Title Suit No. 76/2024

before the Court of learned Civil Judge (Senior Division), Nagaon, on 07.06.2024 seeking, *inter alia,* a declaration that they have not made the disputed withdrawals, recovery/adjustment of the amount of Rs.4,70,000/-. He submits that the said Title Suit was instituted by the petitioners before the bank issued the SARFAESI demand notice.

10. Later on, the bank issued demand notice under Section 13(2) of the SARFAESI Act, on 10.07.2024, demanding an amount of Rs.86,21,715.05/- and the petitioners submitted written objection against the said notice on 04.09.2024.

11. Thereafter, the respondent bank issued symbolic possession notice under Section 13(4) of the SARFAESI Act on 19.09.2024 in respect of Schedule-A property. The said notices were also published in the newspapers, namely, "Times of India" and "Dainik Asam" on 21.09.2024. The petitioners, thereafter on 10.06.2025, filed an application which was registered as I.A. No. 413/2025 with a prayer for staying the further proceeding of S.A. No. 122/2024 till the disposal of Title Suit No. 76/2024, pending before the Court of learned Civil Judge (Senior Division), Nagaon.

12. The petitioners also filed another application under Order XI Rules 14 and 15 of the Code of Civil Procedure, 1908 read with Section 19(25) and Section 22(2)(b) of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 with a prayer to direct the respondent bank to produce certain documents like cheques, withdrawal slips, authorization letter, statement of bank accounts and original application consent form for authorization letter submitted by the petitioner to avail TOD facility. The said Interlocutory Application was registered

as I.A. No. 410/2025.

13. Ultimately, by order dated 15.10.2025, passed in I.A. No. 410/2025, the Debt Recovery Tribunal, Guwahati directed the respondent bank to produce the documents as was prayed for by the present petitioners in their application. However, the said interlocutory application for staying the further SARFAESI proceeding was dismissed.

14. On 10.11.2025, the respondent bank produced certain documents. However, on verifying the same, the learned counsel for the petitioners found that the respondent bank failed to produce all the documents which were directed to be furnished. As such, on 25.11.2025, the petitioners filed an application under Order XI Rule 21 of the Code of Civil Procedure, 1908, read with Section 19(25) and Section 22(2)(b) of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 for non-compliance of order dated 15.10.2025. The application was registered as I.A. No. 815/2025. The petitioners filed another application under Order XI Rules 15 and 18 of the Code of Civil Procedure, 1908, read with Section 19(25) and Section 22(2)(b) of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 as well as Section 17(7) of the SARFAESI Act, 2002 for directing the respondent bank to place on record the original documents which were produced by them on 10.11.2025 and allowing the present petitioners to take the copies of the same.

15. Thereafter, the respondent bank sought some time to file objection against the aforesaid Interlocutory Application. The matter was again taken up on 20.01.2026. However, on the said day, instead of filing their objection against the aforesaid Interlocutory Applications, the respondent bank filed an

application seeking vacation of the interim stay order dated 04.10.2024, passed in S.A. No. 124/2024, in Debt Recovery Tribunal, Guwahati. The said application was registered as I.A. No. 62/2026. Thereafter, by its order dated 20.01.2026 the DRT fixed the entire matter on 05.03.2026 without affording opportunity to the petitioners to file objection against I.A. No. 62/2026 filed by the respondent bank.

16. Thereafter, the Debt Recovery Tribunal, Guwahati, afforded the respondent Nos. 1 and 2 the opportunity to file objections in I.A. No. 813/2025 and I.A. No. 815/2025 and ultimately, said objections were filed by the aforesaid respondents on 13.05.2026. Thereafter, the matter was fixed for hearing on 05.06.2026. Ultimately, by order dated 23.07.2026, the Debt Recovery Tribunal allowed the I.A. No. 813/2025 by directing the respondent bank to place on record 4(four) numbers of cheques, debit and credit slipsand provide the copies of the same to the petitioners. However, it dismissed the I.A. No. 815/2025 for striking the defense of the respondent bank for non-compliance of order dated 15.10.2025.

17. The learned counsel for the petitioners submitted that it is apparent from the record that the order dated 15.10.2025, passed by the Debt Recovery Tribunal, Guwahati, in I.A. No. 410/2025, for production of documents by the respondent bank was not fully complied with by the respondent bank. He submits that the I.A. No. 815/2025, was dismissed by the Debt Recovery Tribunal merely on the plea of the respondent bank that some documents are pertaining to old transactions and could not be produced as same were not traceable/available in the existing records of bank despite *bona fide* and sincere efforts. He also submits that after directing the respondents to produce all the

documents, by its order dated 15.10.2025, in I.A. No. 410/2025, the Debt Recovery Tribunal could not have accepted a flimsy plea of failure of the respondents to trace out the records as same goes against its earlier order dated 15.10.2025. He submits that if the respondent bank has failed to produce the documents which were directed to be produced before Debt Recovery Tribunal, the legal course which was open for the Debt Recovery Tribunal under Order XI Rule 21 of the Code of Civil Procedure, 1908 was to strike out the defense of the respondents in S.A. No. 122/2024. However, by not doing so, the respondents have committed perversityand illegality.

18. The learned counsel for the petitioners submitsthat alternatively, the Debt Recovery Tribunal could have directed that the failure of the respondent bank to produce the relevant documents as was directed by the Debt Recovery Tribunal may be taken as a relevant factor while considering the S.A. No. 122/2024. The learned counsel for the petitioners submits that the petitioners never availed or authorized anyone to have TOD (Temporary Overdraft) facility from respondent bank neither do they authorize the transaction to any unknown account holder and failure to produce the relevant documents as was directed by the Debt Recovery Tribunal, Guwahati, in I.A. No. 410/2025, by its order dated 15.10.2025 would cause serious prejudice to the petitioner as well asdifficulty for the Debt Recovery Tribunal itself in effectively adjudicating the SARFAESI Application No. 122/2024.

19. The learned counsel for the petitioners further submits that though the remedy of statutory appeal is provided under provisions of the Recovery of Debts and Bankruptcy Act, 1993. However, the constitutional remedy of an application under Article 227 of the Constitution of India is not barred in spite of

availability of an alternative remedy. In support of his submissions, the learned counsel for the petitioners has cited following rulings:

1. "***P.H.R. Invent Educational Society Vs. UCO Bank and Others***", reported in "***(2024) 6 SCC 579"***;

2. "***BhagyaLakshmi Maulik and Others Vs. State Bank of India and another***", reported in "***2002 Supreme (Cal) 511***".

20. The learned counsel for the petitioners further submits that the principles of natural justice have also been violated in this case as the Tribunal did not afford any reasonable opportunity to the present petitioners to file their objections in I.A. No. 62/2026. He submits that this is a fit case where the supervisory jurisdiction of this Court may be invoked and the impugned order dated 23.07.2026, passed in I.A. No. 815/2025, may be set aside.

21. Mr. B.P. Borah, the learned counsel for the respondent Nos. 1 and 2 raised the question of maintainability of this CRP(IO) on the ground that the petitioners had an adequate and alternative remedy available against the impugned order, which was not availed by them. He submits that it is a settled proposition of law that when alternative remedy is available to a litigant, the High Court should not invoke its supervisory jurisdiction under Article 227 of the Constitution of India.

22. He submits that the impugned order dated 23.07.2026, passed by the Debt Recovery Tribunal, Guwahati, in I.A. No. 815/2025 is an appealable order under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 and the petitioners have not stated any reason in the instant application for not preferring the statutory appeal against the said order. He submits that the Apex

Court in the case of "***United Bank of India Vs. Satyawati Tondon and Ors***." reported in "***(2010) 8 SCC 110"*** has deprecated the exercise of writ jurisdiction under Article 226 of the Constitution of India for interfering with the orders against which statutory appeal has been provided under Recovery of Debts and Bankruptcy Act, 1993 as well as SARFAESI Act, 2002.

23. He submits that even the Gauhati High Court Rules provides that an application under Article 227 of the Constitution of India shall have to comply with the provisions contained in Chapter-IV, V, VA of the Gauhati High Court Rules. He submits that as per Rule 1 of Chapter-VA of the said Rules, the petitioner is required to incorporate a paragraph in the petition under Article 227 of the Constitution of India, to the effect that the petitioners have no other adequate and alternative remedy and the remedy sought for is complete and adequate. However, the petitioners have made no averment to that effect in the instant petition. As such, he submits that the instant CRP(IO) is not maintainable. In support of his submission, the learned counsel for the respondent has cited following rulings: —

a) ***Sadhana Lodh v. National Insurance Company Limited & Ors.,*** reported in (2003) 3 SCC 524;

b) ***Vikas Kucheria and another Vs. IDBI Bank and others*** reported in 2017 (4) GLT 997;

c) ***K. Sreedhar v. Raus Constructions Private Limited & Ors.***, reported in (2023) 11 SCC 169;

d) ***Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & Ors.,***

reported in (2022) 5 SCC 345.

24. I have considered the submissions made by the learned counsel for both sides and have gone through the materials on records. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submission.

25. The Gauhati High Court Rules provide that whenever an application under Article 227 of the Constitution of India is filed, it shall contain an averment to the effect that the petitioner has no other adequate or alternative remedy. This is mandated by Rule 1 of Chapter V-A of the Gauhati High Court Rules. However, on perusal of the application filed by the petitioners in the instant CRP(IO), it appears that no such averment has been made in their application.

26. It also appears that the order of the Debts Recovery Tribunal, Guwahati, which has been impugned in this CRP(IO), is an appealable order under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993. The appeal lies before the Debts Recovery Appellate Tribunal (DRAT). No averment has been made in the application filed by the petitioner as to why the petitioners have not taken recourse to statutory appeal which was available to them in this matter. Nothing has been pleaded in the application filed by the petitioners under Article 227 of the Constitution of India as to why, in spite of having a statutory remedy, the petitioners have approached this Court under Article 227 of the Constitution of India, and why this Court should interfere in the impugned order in spite of the fact that the statutory remedy was not availed by the petitioners.

27. In a catena of rulings, including the rulings cited by learned counsel for both sidesin this case, the Supreme Court of India has time and again deprecated the practice of invoking the supervisory jurisdiction under Article 227 of the Constitution of India even when the petitioner has the recourse to adequate and alternative remedy.

28. In the case of ***Shalini Shyam Shetty and Another v. Rajendra Shankar Patil,*** reported in **(2010) 8 SCC 329**, the Apex Court has observed as follows: —

> *"High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court."*

29. In the instant case, both the statutes which are involved in the matter, namely the Recovery of Debts and Bankruptcy Act, 1993, as well as SARFAESI Act, 2002, have the provisions for appellate forum against orders passed by the Debts Recovery Tribunal.

30. The petitioners have not averred, as required under the Gauhati High Court Rules, in their petition, regarding existence of an alternative statutory remedy. Same may also be viewed as suppression of material fact disentitling them from the discretionary remedy under Article 227 of the Constitution of India.

31. Moreover, in view of the observations made by the Apex Court in the rulings cited above that where there is an alternative statutory remedy available for the petitioners, same would operate as a restraint on exercise of supervisory power by the High Court under Article 227 of the Constitution of India, this CRP (I/O) is not maintainable.

32. As in the instant case, an alternative statutory remedy has been provided by the statute which was not availed by the petitioners, neither pleaded by them in their application under Article 227 of the Constitution of India as required by Gauhati High Court Rules, this Court is of the considered opinion that this is not a fit case for exercising supervisory jurisdiction of the High Court under Article 227 of the Constitution of India.

33. For the reasons discussed in the foregoing paragraph, this CRP (IO) is hereby dismissed.

34. The parties are left to bear their own costs.

JUDGE

Comparing Assistant