GAHC030004302025

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

Case No. : RFA/26/2025

Sh. B. Dawngzela
S/o Lairuala (L), R/o Ramhlun South, Aizawl, Mizoram

VERSUS

Sh. Abdul Rahim and 3 Ors.
S/o Abdul Jalil, R/o H.No.1, Bagirkhala, PO and PS. Nilam Bazar, Dist. Karimganj, Assam 2:Sh. Lalruatfela

3:UCO Bank

4:Sh. Abhijit Da

Advocate for the Petitioner : Lalremruata Chenkual

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

Date : 13-10-2026

Heard Mr. Lalremruata Chenkual, learned counsel for the appellant. Also heard Mr. Zodinpuia Hnamte, learned counsel for respondent No. 3 UCO Bank. No one appears for the respondent Nos. 1, 2 & 4.

2. The Order dated 01.09.2026, states that notice is accepted to be completed upon respondent No. 2.

3. This appeal is against the impugned Order dated 27.03.2025, passed by the Court of the Civil Judge, (Senior Division) - III, Aizawl in Civil Suit No. 38/2021, by which the appellant/plaintiff's prayer for cancelling the Mortgage Deed dated 10.09.2018, had been dismissed. The appellant had mortgaged his land with UCO Bank (respondent No. 3), to enable the respondent Nos 1 & 2 to avail of a loan from the respondent No. 3. The appellant as plaintiff in Civil Suit No. 38/2021, had also prayed for absolving the appellant from the liability of repayment of the loan, as a guarantor.

3. The facts of the case in brief is that the respondent No. 2 had availed of a cash credit loan amount of Rs. 135 lakhs from UCO Bank (respondent No. 3) through a Special Power of Attorney made in favour of the respondent No. 1. The appellant stood as a guarantor for the loan, by mortgaging his land covered by LSC No. 27 of 1976 with UCO Bank.

4. As the respondent No. 2 defaulted in the payment of loan and the loan was declared as a non-performing asset, the Bank took steps for recovery of the same by issuing notices to the loan defaulter. The appellant was also given a notice under Section 13 (2) of the SARFAESI Act, 2002, informing him that the credit facility had been classified as a non-performing asset w.e.f. 31.03.2021 and thereafter, asked the appellant to discharge his liability as a guarantor of the loan, failing which, the bank would exercise all rights under section 13 (4) of the SARFAESI Act, 2002. As no reply was forthcoming from the appellant, a possession notice was issued by UCO Bank on 25.10.2021 under section 13(4) of the SARFAESI Act.

5. It may also be stated that the UCO Bank had approached the Debt Recovery Tribunal, Guwahati vide OA No. 225/22 for recovery of the loan amount, wherein the present appellant and the respondent Nos. 1 and 2 were also parties. The OA No. 225/2022 was disposed of by the DRT, Guwahati on 09.08.2024 as follows:-

"*The matter is taken up as per previous order.*
Learned counsel Mr. S Bhattacharjee has appeared for the applicant bank.
None has appeared for the defendants No. 1 & 2. The matter is proceeding ex-parte against them.
Learned counsel Mr. K Deka has appeared for the defendant No. 3.
The order is dictated and corrected by the undersigned and pronounced in the Tribunal under my signature on 09.08.2024 with the following operative portion:

ORDER

In the result, the present Original Application No. 225/2022 is allowed with cost as under-
(1) The defendants No. 1, 2 & 3 are jointly and severally liable to pay to the applicant bank a sum of Rs. 2,02,91,608.91 (Rupees Two Crore Two Lakhs Ninety-One Thousand Six Hundred Eight and Paisa Ninety-One) only with pendentelite and future interest @10.70% p.a. with monthly rests from 01.06.2022 till the date of full payment/realization and also cost of the application.
(ii) The charge of the certificated amount be kept alive on mortgaged property i.e. An area of land measuring 5200 sq.ft. situated at Ramhlun South, Aizawl, P.O. Ramhlun South, P.S.- Bawngkawn, within land and Revenue Settlement Office, Aizawl, District-Mizoram, under LSC no. 27 of 1976, standing in the name of B. Dawngzela S/o-Lairuala, and the said land is bounded by: East Hira's Site; West: 8. Dawngilana; North: Main Road (Way to Chanmari); South College Road, as described in Schedule of the OA till the amount is realized in full.
(iii) The applicant bank is entitled to proceed against the secured items towards recovery of the debts.
(iv) The applicant bank is also entitled to proceed against the personal assets and properties of the defendants towards recovery of the dues.
(v) The applicant bank is entitled to the costs of the O.A. which includes the advocate fees of the applicant bank. Applicant is directed to file the cost memo within 2 weeks from today.
(vi) Issue Recovery Certificate accordingly for a sum Rs. 2,02,91,608.91 (Rupees Two Crore Two Lakhs Ninety-One Thousand Six Hundred Eight and Paisa Ninety-One) only in favour of the applicant bank against the defendants No. 1, 2 & 3."

6. Prior to the disposal of OA No. 225/22, the present appellant had approached the Civil Court (Senior Division)-III, Aizawl, vide Civil Suit No. 38/2021, praying for cancellation of the mortgage deed executed by him, wherein he was a guarantor for the loan given to the respondent Nos. 1 and 2.

The ground taken by the appellant was that a fraud had been played on him. The learned Civil Court, vide the impugned Order dated 27.03.2025, recorded the submission of the learned counsel for the appellant, which was to the effect that the Zonal Manager of UCO Bank had persuaded him to become a guarantor of the loan availed by the respondent Nos. 1 and 2, by signing the mortgage documents without disclosing the facts, which constituted fraud. The learned Trial Court, however, dismissed the Civil Suit, on the ground that under Section 34 of the SARFAESI Act, 2002, there was a bar on the Civil Court's jurisdiction relating to matters to be decided under the SARFAESI Act, 2002.

7. The appellant has now come before this Court, challenging the decision of the Civil Court in dismissing Civil Suit No. 38/2021.

8. I have heard the learned counsels for the parties.

9. I have also seen that subsequent to the notice issued under Section 13 (2) of the SARFAESI Act, 2002 and the notice issued by the UCO Bank under Section 13(4) of the SARFAESI Act, 2002. Further, the DRT, Guwahati, has already disposed of the matter regarding non-payment of loan by the respondent Nos. 1, 2 and the appellant, vide the Order dated 09.08.2024 passed in OA No. 225/22, which has not been put to challenge under Section 17 of the SARFAESI Act till date. Further, as Section 34 of the SARFAESI Act states that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or the Appellate Tribunal is empowered to determine under the SARFAESI Act, I do not find any infirmity in the decision of the learned Civil Judge (Senior Division)-III, Aizawl in Civil Suit No. 38/2021.

10. The appeal is accordingly dismissed.

JUDGE

Comparing Assistant