

# THE HIGH COURT OF MEGHALAYA AT SHILLONG.

W.P.(C) NO.(SH)77/2012

Shri.Earnest Paslein,  
S/o Shri.Fabian Suting,  
Amlarem, Jaintia Hills District,  
Meghalaya.

:::: Petitioners

- Vrs -

1. Recovery Officer-I,  
Debts Recovery Tribunal,  
Guwahati 781007.

2. North Eastern Development Finance Corporation Ltd.,  
Basundhara Enclave,  
B.K. Kakati Road,  
Ulubari, Guwahati-7.

:::: Respondents

BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioners : Mr. H.S. Thangkhiew, Sr.Adv  
Mr. P.N. Nongbri, Adv

For the Respondents : Mrs. PDB Baruah for respdt.No.2  
None appears for respdt.No.1.

Date of hearing : **29.07.2013**

Date of Judgment & Order : **29.07.2013**

## JUDGMENT AND ORDER (ORAL)

Heard Mr. HS Thangkhiew, learned senior counsel assisted by Mr. P Nongbri, learned counsel for the petitioner and Mrs. PDB Baruah, learned counsel for the respondent No.2. None appears for the respondent No.1 despite proper service of notice of the present petition.

2. This petition under Article 226 of the Constitution of India is directed against the order dated 14.02.2012 passed by the Recovery Officer-1 asking the

writ petitioner to appear in person before the Recovery Officer on 21.03.2013. Because of the interim order passed in the present writ petition, the writ petitioner did not appear before the Recovery Officer on the said date fixed for his personal appearance i.e. 21.03.2013. For deciding the present writ petition, it is not required to mention the facts in details leading to the filing of the present writ petition. It would be suffice to mention only the gist of the facts.

**3.** The petitioner was a promoter of food processing unit in the name and style of M/S Jaintia Fruits Processing and Vegetable Preservation Unit, Amlarem, Jaintia Hills District. In the year 1998-99, the said food processing unit of the petitioner i.e. M/S Jaintia Fruits Processing and Vegetable Preservation Unit, Amlarem, Jaintia Hills District filed an application for soft loan to the North Eastern Development Finance Corporation Ltd. for an amount of Rs.20,32,636/- (Rupees twenty lakhs thirty two thousand six hundred and thirty six) only. Accordingly, the petitioner was granted soft loan for the said amount. As the petitioner did not repay the loan, the respondent No.2 had approached the Debts Recovery Tribunal (Assam, Nagaland, Meghalaya, Manipur, Tripura, Arunachal Pradesh and Sikkim) by filing an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the Act of 1993'). The said case was registered as Original Application No.9/2004. The learned Debts Recovery Tribunal after full length trial of the case and hearing the case of the respective parties passed the judgment and order dated 20.06.2005 allowing the application filed by the respondent No.2 for recovery of debts from the petitioner-food processing unit.

**4.** Thereafter, the debts recovery certificate was also issued vide letter/order dated 04.08.2005. The copy of the said letter/order dated 04.08.2005 is available at Annexure-2 to the writ petition and under that certificate, the

petitioner and his food processing unit had been asked to repay the amount of Rs.24,30,425/- (Rupees twenty four lakhs thirty thousand four hundred and twenty five) only along with interest. The said recovery certificate dated 04.08.2005, had been assailed by the writ petitioner by filing a writ petition being WP(C)No.302(SH)2005 before the Permanent Bench of the erstwhile Gauhati High Court, Shillong Bench and that writ petition was disposed of by passing the order dated 12.09.2007, wherein and where-under, the Hon'ble High Court held that *"For the reasons stated in the foregoing, this writ petition is dismissed. However, considering the precarious position in which the petitioner has found himself, the ends of justice will be met if the respondent No.2 is directed not to carry out the impugned Demand Notice for a period of three months to enable the petitioner to repay the outstanding loan amount together with interest and other cost and expenses due. The stay order is accordingly vacated."*

**5.** It is an admitted case of both the parties that the Recovery Officer had taken up steps for attachment of ancestral secured properties, particulars of which are mentioned in the order dated 22.10.2008 of the Recovery Officer. It is the case of the petitioner that the mode of recovery of debt determined by the Tribunal are mentioned in Chapter-V of the Act of 1993. It is the further case of the petitioner that under Section 25 of the said Act of 1993, the Recovery Officer had to take steps mentioned in the said Section of the said Act of 1993. The learned senior counsel for the petitioner contended that simultaneously steps for attachment and arrest cannot be taken up for recovery of debts. On bare perusal of Section 25 of the Act of 1993, it speaks otherwise. However, this Court is not passing the final decision in this matter in the given case. By the impugned order dated 14.02.2012 passed by the Recovery Officer as stated above, the petitioner had been asked to appear in person before the Debts Recovery Tribunal. On bare perusal of the order dated 14.02.2012, it is crystal clear that a chance was

given to the petitioner to put up his case and also the Debts Recovery Officer had not finally decided the matter. In such circumstances, this Court is of the considered view that all the grounds taken up by the writ petitioner in this writ petition could be agitated before the Debts Recovery Officer.

6. Mrs. PDB Baruah, learned counsel for the respondent No.2 also strenuously contended that the present writ petition for seeking remedy against the impugned order dated 14.02.2012 is not maintainable, inasmuch as, the impugned order itself is an appealable order and also there is a statutory remedy as provided under Section 30 of the Act of 1993 to file an appeal before the Tribunal.

7. In the above factual backdrop, this Court is of the considered view that there is no materials for quashing the impugned order dated 14.02.2012. Accordingly, this Court is not entertaining the writ petition. However, it is left to the petitioner to submit all the grounds mentioned in the present writ petition before the Recovery Officer when he appears before the Recovery Officer in person.

8. With the above observations, this writ petition stands dismissed.

**JUDGE**

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