

GAHC010228012021



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

Case No. : WP(C)/7330/2021

M/S LUHIT COMMERCIALS AND 4 ORS.
REP BY ITS PROPRIETOR MRS. DIPIKA RANI BURAGOHAIN,
BAMUNIMAIDAM INDUSTRIAL ESTATE BY LANE 1 GUWAHATI-781021
DIST. KAMRUP (M) ASSAM

2: DIPIKA RANI BURAGOHAIN
W/O LT. PULIN CHANDRA BURAGOHAIN
R/O R.G. BARUAH ROAD 18 EAST BY LANE HOUSE NO. 15
SUNDARPUR
GUWAHATI-781005
DIST. KAMRUP (M) ASSAM

3: PRAYAG PULIN BURAGOHAIN
S/O LT. PULIN CHANDRA BURAGOHAIN AUTHORISED REP. OF THE
PETITIONER FIRM
M/S LUHIT COMMERCIALS
R/O R.G. BARUAH ROAD 18 EAST BY LANE HOUSE NO. 15
SUNDARPUR
GUWAHATI-781005
DIST. KAMRUP (M) ASSAM

4: PRAHALAD PULIN BURAGOHAIN
S/O LT. PULIN CHANDRA BURAGOHAIN
R/O R.G. BARUAH ROAD 18 EAST BY LANE HOUSE NO. 15
SUNDARPUR
GUWAHATI-781005
DIST. KAMRUP (M) ASSAM

5: PAANCHAL PULIN BURAGOHAIN
S/O LT. PULIN CHANDRA BURAGOHAIN
R/O R.G. BARUAH ROAD 18 EAST BY LANE HOUSE NO. 15
SUNDARPUR
GUWAHATI-781005
DIST. KAMRUP (M) ASSA

VERSUS

PUNJAB NATIONAL BANK, ZONAL OFFICE AND 3 ORS.
REP. BY ITS GENERAL MANAGER UBI BUILDING 2 ND FLOOR HEM
BARUA ROAD PANBAZAR GUWAHATI-781001

2:THE DEPUTY MANAGER
KAMRUP CIRCLE OFFICE PUNJAB NATIONAL BANK
BHANGAGARH
GUWAHATI-781005

3:THE SENIOR MANAGER
PUNJAB NATIONAL BANK
NOONMATI BRANCH MRD ROAD
BAMUNIMAIDAN GUWAHATI-781021

4:THE AUTHORISED OFFICER
CIRCLE SASTRA CENTRE GUWAHATI CO NILGIRI MANSION 1ST FLOOR
BHANGAGARH
G.S. ROAD
GUWAHATI-78100

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : SC, PNB

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 29.12.2021
(K.R. Surana, J.)

Heard Mrs. D. Buragohain, learned counsel for the petitioners. Also heard Mr. A. Ganguly, learned counsel for the respondents.

2. Aggrieved by the issuance of possession notice under Section 13(4) of the SARFAESI Act, the petitioners have filed this writ petition under Article 226 of the Constitution of India.

3. The learned counsel for the petitioner has pressed all the points which have been raised in the writ petition. It is submitted that the classification of the account as NPA is contrary to the master circular of the bank dated 01.07.2014 (Annexure-8). It is also submitted that the outstanding balance had exceeded cash credit limit on account of booking of interest for the moratorium period. It is also submitted that the interest was wrongly calculated on the account. It is further submitted by referring to bank's letter dated 13.12.2016 (Annexure-7) by which pursuant to directions issued by the Banking Ombudsman dated 12.11.2016, the petitioner no.5 was informed that he was not a guarantor to the credit facilities enjoyed by the petitioner no.1. However, as his deceased father was a guarantor and a mortgager of properties in connection with the credit facilities availed by petitioner no.1, his status would that be of a shared mortgager, a position which has been accepted by the petitioner vide affidavit dated 25.11.2011. In this context, it is submitted that the respondents have taken symbolic possession of the mortgage property on 23.12.2021 and it is apprehended that the respondents may issue newspaper advertisement and project the petitioner no.5 as a guarantor. It is submitted that the petitioners have already written to the bank to remove the status of petitioner no.5 as a guarantor. Accordingly, the status of the petitioner no.5 as a guarantor has been removed. The grievance of the petitioners is that the petitioner no.4 has also represented before the respondents to treat him similar to the status provided to the petitioner no.5 and in this regard, reference is made to e-mail dated 22.10.2020 (Annexure-7) and reminder by email dated 31.03.2021.

4. Having heard the learned counsel for the petitioners as well as the learned counsel for the respondents, the Court is of the opinion that disputed questions of facts have been raised in this writ petition. Therefore, as the

respondents have already taken steps under Section 13(4) of the SARFAESI Act, the said Act under Section 17 prescribes an alternative statutory remedy of filing an appeal. Hence, the Court is of the considered opinion that the petitioners be relegated to avail the statutory appellate remedy as provided under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Guwahati.

5. At this stage, the learned counsel for the petitioners has submitted that at present there is no Presiding Officer of Debts Recovery Tribunal, Guwahati. In this context, it may be mentioned that the Presiding Officer of the Debts Recovery Tribunal-2, Kolkata has been given the additional charge of Presiding Officer of Debts Recovery Tribunal, Guwahati and the Court is informed that on the days when the Presiding Officer is not available in Guwahati, urgent matters are taken up by way of video conferencing.

6. Accordingly, the Court is inclined to provide that the petitioner would be at liberty to file a statutory appeal under Section 17 of the SARFAESI Act, if so advised and the petitioners would also be at liberty to move an urgent application so that the matter can be taken up by the Presiding Officer, Debts Recovery Tribunal, Guwahati by video conferencing. Accordingly, it is provided that in the event, the petitioners apply before the Debts Recovery Tribunal, Guwahati to have the matter and/ or prayer for interim relief taken up urgently by video conferencing, accompanied with a certified copy of this order, the Debts Recovery Tribunal, Guwahati shall entertain the said application and take up the matter urgently through video conferencing mode.

7. However, having regard to the letter dated 13.12.2016 (Annexure-7) issued by the Chief Manager, United Bank of India, Noonmati Branch, the respondents are directed to take note of the contents thereof. At this stage, the

Court takes note of the submissions made by the learned counsel for the respondents that after having taken over the mortgage properties, the bank has already issued an advertisement of taking over symbolic possession in two newspapers i.e. the Times of India and the Dainik Asom of today, i.e. 29.12.2021. Accordingly, it is provided that the respondents would issue a corrigendum to clarify the status of the petitioner no.5, Mr. Paanchal Pulin Buragohain as a shared mortgager instead of guarantor. The respondents are also at liberty to consider the representation made by the petitioner no.4 for altering his status from guarantor to joint mortgager and to inform the petitioner no.4 of the decision preferably within a period of 10 (ten) days from the date of receipt of certified copy of this order.

8. As the matter is not adjudicated on merit, it would be open to the petitioners to take any ground as they may be so advised before the Debts Recovery Tribunal, Guwahati.

9. Accordingly, this writ petition stands disposed of in the motion stage without issuing notice on the respondents.

JUDGE

JUDGE

Comparing Assistant