GAHC010012792021

THE GAUHATI HIGH COURT

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

Case No. : WP(C)/445/2021

PRADIP SENAPATI AND 2 ORS
S/O. LT. SIDDHI RAM SENAPATI, VILL. DOLIBARI, P.O. DADARA, P.S. HAJO, DIST. KAMRUP (ASSAM) PIN-781104.

2: PRANITA KALITA
W/O. SRI PRADIP SENAPATI
VILL. DOLIBARI
P.O. DADARA
P.S. HAJO
DIST. KAMRUP (ASSAM) PIN-781104.

3: GHANYASHYAM SENAPATI
S/O. LT. SIDDHI RAM SENAPATI
VILL. DOLIBARI
P.O. DADARA
P.S. HAJO
DIST. KAMRUP (ASSAM) PIN-781104

VERSUS

STATE BANK OF INDIA AND 2 ORS
HAVING ITS CORPORATE OFFICE AT MUMBAI AND ITS BRANCH OFFICES IN THE STATE OF ASSAM INCLUDING SBI GUWAHATI BRANCH, REP. BY STREESSED ASSETS RECOVERY BRANCH (SARB) M.R.D. ROAD, BAMUNIMAIDAN, GUWAHATI-781021.

2:ASSET RECONSTRUCTION COMPANY (INDIA LTD. (ARCIL)
HAVING ITS REGD. OFFICE AT THE RUBY
10TH FLOOR
29
SENAPATI BAPAT MARG (W)
DADAR WEST
MUMBAI
PIN-400028.

3:ARMS
A DIVISION OF ASSET RECONSTRUCTION COMPANY (INDIA) LTD.
(ARCIL) 563
SOOD VILLA, SECOND FLOOR
BEHIND ICICI BANK, CHRISTIAN BASTI, G.S. ROAD
GUWAHATI, PIN-781005

Advocate for the Petitioner : MR. P P DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 22.2.2021

Heard Mr. P.P. Das, Learned counsel for the petitioners.

The petitioners who are the husband and wife borrowed an amount more or less Rs. 7 lakhs from the respondent No. 1,State Bank of India, Guwahati Branch. The said loan account bearing No. 10823766180 was declared as non performance assets following which the Bank filed Title Suit No. 326/2011 in the court of learned Civil Judge, No. 3 Kamrup (M) at Guwahati seeking for a decree for realization of Rs. 9,26,178.49. There was a settlement in between the petitioners and respondent No. 1, Bank in the Lok Adalat wherein terms of compromise which was arrived at is extracted hereinbelow:

"*BEFORE LOK ADALAT AT GUWAHATI*

dated 22.9.2012:Court No. Civil Judge No. 3(M) Guwahati

T.S.Case No. 326/2011,SBI Vs Pradip Senapati and ors.

May it please your honour ,

We the parties above named have arrived at a compromise/ settlement in the above case dispute as per terms and conditions mentioned below. No coercion or force/ temptation has been made to any of the parties to arrive at the compromise.

We therefore request to record the compromise/Settlement made before the Lok Adalat and pass order /decree/award accordingly today itself.

Terms of compromise- The Suit is settled. The defendant shall have to pay @ Rs. 6,500/- six thousand five hundred in EMI. The total EMI is 160. The EMI shall be deducted from the Salary wef Oct. 2012.

1. *The settlement is arrived after adjusting the amount of Rs 85,770/ being deducted by the bank from salary during pendency of the suit.*

2. *The above settlement also arrived after adjusting 44,502/- Rs forty four thousand five hundred two being policy."*

On the basis of said compromise the learned Civil Judge, No. 3 Kamrup Guwahati disposed of the suit by holding that the suit was settled at Lok Adalat and the petitioner Bank was entitled for refund of court fees paid at the time of the title suit under the terms of the Legal Services Authority Act, 1987. The said order was passed on 22.9.2012. As per the terms of the settlement the equated monthly instalment of Rs. 6,500 was to be deducted from the salary account of petitioner No. 1 w.e.f. October,2012 and it was further settled that total numbers of EMI was 160. On 28.11.2020 the respondent Bank through the respondent No. 3 issued a notice under sub- Section 2 of Section 13 of the SARFESI Act, 2002 directing the petitioner to comply with the demand made under the said notice. Otherwise it was threatened for coercive measure at the risk of the petitioners. The petitioners are aggrieved that there was default on the part of the respondent bank in not deducting the EMI from the account of the petitioner 1 and upon accumulation of huge outstanding the impugned notice dated 28.11.2020 was issued.

Let notice be issued.

Petitioner shall take steps on the respondents within a period of three days from today by way of registered post A/D. Notice is made returnable after four weeks.

Till the next returnable date, the Bank shall not take any coercive measures on the petitioners.

JUDGE

Comparing Assistant