

GAHC010061682019



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

Case No. : WP(C) 1939/2019

1:BHABEN BORAH
S/O. LATE MAHENDRA BORAH, RESIDENT OF FLAT NO. 3A,
THIRD FLOOR, NIFTY ENCLAVE, SEWALI PATH, HATIGAON,
GUWAHATI, DIST.- KAMRUP(M), ASSAM, PIN- 781006.

VERSUS

1:THE UCO BANK HEAD OFFICE AT 10, BTM SARANI, BRABOURNE ROAD,
KOLKATA-700001, REP. BY ITS CHAIRMAN.

2:THE UCO BANK REHABARI BRANCH A.K. AZAD ROAD GUWAHATI DIST.
KAMRUP(M) ASSAM-8 REP. BY ITS CHIEF MANAGER.

3:THE AUTHORISED OFFICER UCO BANK REHABARI BRANCH A.K. AZAD
ROAD GUWAHATI DIST. KAMRUP(M) ASSAM-8.

4:THE ADDITIONAL DISTRICT JUDGE
(MAGESTERIAL BRANCH) KAMRUP(M) ASSAM.

5:PRANJAL KUMAR BHORALEE
S/O PRAFULLA KUMAR BHORALEE
RO. NIRUPAMA APARTMENT TARUN NAGAR
ABC GUWAHATI DIST.- KAMRUP(M) ASSAM PIN- 781006

Advocate for the Petitioner : MR A D CHOUDHURY

Advocate for the Respondent : MR. N BORUAH

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUP KUMAR GOSWAMI

ORDER

Date : 20-03-2019

(A.S. Bopanna, CJ)

Heard Mr. A.D. Choudhury, learned counsel for the petitioner.

Though we noticed that the proceedings assailed is under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), the contention as put forth is to the effect that the property belonging to the petitioner purchased through the Sale Deed dated 20.04.2007 was not mortgaged by the petitioner but the present action is initiated based on a fraudulent agreement dated 31.05.2006 to which the petitioner was not a party. Hence, in that context since the very exercise of jurisdiction by the authority under the SARFAESI Act is raised in the present petition, *prima facie*, we are of the opinion that the petition in that context would require further consideration.

Hence, issue notice to the respondents through registered post with A/D, returnable in 4(four) weeks.

For the very reasons, as indicated above, there shall be an *interim* order protecting the possession of the petitioner herein in respect of the property, which is indicated in the schedule to the Sale Deed dated 20.04.2007, which is also indicated in the order dated 14.02.2019 passed by the Additional District Magistrate, Kamrup Metropolitan District, Guwahati.

Sd/-
JUDGE

Sd/-
CHIEF JUSTICE

M. Sharma

Comparing Assistant