GAHC010061682019

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

Case No. : WP(C)/1939/2019

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

THE UCO BANK AND 4 ORS.
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:ON THE DEATH OF PRANJAL KUMAR BHORALEE HIS LEGAL HEIRS
S/O PRAFULLA KUMAR BHORALEE
RESIDING AT NIRUPAMA APARTMENT
TARUN NAGAR
ABC
GHY
DIST. KAMRUP(M)
ASSAM
PIN-781006

5.1:CHABI BHORALEE
WIFE OF PRANJAL BHORALEE
NIRUPAMA APARTMENT
TARUN NAGAR
ABC
GHY
DIST. KAMRUP(M)
ASSAM
PIN-781006

5.2:UPASANA BHORALEE
DAUGHTER OF PRANJAL BHORALEE
NIRUPAMA APARTMENT
TARUN NAGAR
ABC
GHY
DIST. KAMRUP(M)
ASSAM
PIN-78100

Advocate for the Petitioner : MR A D CHOUDHURY, MR. P DUTTA,MR. D CHOUDHURY,MR. T CHAKRABORTY,MR A DUTTA

Advocate for the Respondent : MR. N. BORUAH, MR. M SHARMA (r-1 to 4),MS. S YASMIN (r-1 to 4),MR R. K. DUTTA (R-1-R-3),MR. N. BORUAH (R-1-R-3),FOR CAVEATOR,MR. H.K. HAZARIKA, JUNIOR GOVT. ADVOCATE(R-4)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 09.06.2026
(S. K. Medhi, J)

The instant petition under Article 226 of the Constitution of India has been filed with the following prayers:

> *In the premises aforesaid, the petitioners pray that Your Lordships may be pleased to call for the records, issue Rule calling upon the respondents to show cause as to why*
>
> *1. A writ in the nature of Mandamus shall not be issued declaring that the respondent bank has no jurisdiction and authority and sanction under law to initiate proceeding under SARFAESI Act, 2002 against the flat purchased by the petitioner vide Deed No.8868/2007.*
>
> *2. A writ in the nature of Certiorari shall not be issued setting aside and quashing the entire proceeding initiated by the respondent bank under SARFAESI Act, 2002 so far relating to Flat No.3A at Nifty Enclave.*
>
> *3. A writ in the nature of Certiorari shall not be issued setting aside and quashing the notice dated 16.02.2019 issued by the respondent bank under the provision of the SARFAESI Act, 2002.*
>
> *4. A writ in the nature of Certiorari shall not be issued setting aside and quashing the order dated 14.02.2019 issued by the Addl. District Magistrate, Kamrup(M). Guwahati.*
>
> *5. A writ in the nature of Mandamus shall not be issued directing the respondent bank not to disturb the possession of the petitioner in respect of flat.*

And

Upon cause or causes being shown and after hearing the parties make the Rule absolute and/or pass such further or other order(s) as Your Lordships may seem fit and proper in the facts and circumstances of the instant case.

And

In the interim during the pendency of the Rule your Lordships may be pleased to pass an interim order directing the respondent bank not to disturb the possession of the petitioner in respect of flat No.3A at Nifty Enclave.

And for this act of Kindness, the petitioner as in duty bound shall ever pray"

2. As per the facts projected, the petitioner had purchased a property (flat) vide a registered sale deed on 20.04.2007. It is the specific case of the petitioner that all necessary formalities prior to execution of the sale deed was done. Pursuant thereto the name of the petitioner was mutated in the *jamabandi* and electricity connection was also taken in his name. The Guwahati Municipal Corporation had issued holding no. 3136 and the petitioner was peacefully enjoying the possession of the property. The problem started when a possession notice dated 12.10.2018 was affixed on the property which was issued under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter the SARFAESI Act). The said notice was against the borrower and the guarantor of the respondent bank and it is the specific case of the petitioner that he is neither the borrower nor the guarantor. Accordingly, the petitioner had filed a representation dated 13.10.2018 for withdrawal of the notice which, however, was not done.

3. On the other hand, the respondent bank had issued a vacation notice

issued 16.02.2019 which was, however, addressed to one Pranjal Kumar Bhoralee, who has been impleaded as respondent no.5 and also to one Smt. Chabi Bhoralee, who was the guarantor. It may however be mentioned that during the proceeding, the respondent no.5 had passed away and vide an order dated 15.02.2022 passed in I.A.(Civil)/334/2022, his legal heirs were impleaded.

4. An order under Section 14 of the Act was also issued on 14.02.2019 by the District Magistrate, which was responded to by the petitioner on 11.03.2019 by filing a representation.

5. It is the aforesaid action which has been put to challenge in the present writ petition with the prayers, as quoted above.

6. We have heard Shri T. Chakraborty, learned Counsel for the petitioner and we have also heard Shri M. Sharma, learned Standing Counsel of the respondent Bank. Ms. R.B. Bora, learned State Counsel appears for respondent no.4. The private respondents have chosen not to appear.

7. Shri Chakraborty, learned Counsel for the petitioner has submitted that from the materials which have been procured by his client, it appears that a mortgage was created by the respondent no.5 on the basis of a Deed no. 5916 of 2006 dated 03.06.2006. He, however, hastens to add that though an equitable mortgage was created by the bank by means of deposit of title deed, the said deed was not a title deed but only an agreement for sale which, by no way would mean that any right, title or interest has been transferred between the parties. He has drawn the attention of this Court to the deed itself, which appears to be a deed for agreement of sale between one M/S. Gargi and Associates and Pranjal Kumar Bhoralee. He has clarified that the flat in question was purchased vide registered sale deed on 20.04.2007 from M/S Gargi and Associates and the said sale deed is not the subject matter of any challenge. He

has also reiterated that before execution of the aforesaid sale deed and its registration on 10.04.2007, all formalities including due diligence exercise was done and it was never within the knowledge of the petitioner that there was an agreement for sale which was given on mortgage to the respondent Bank. He otherwise submits that the said Deed no. 5916 of 2006 could not have been a basis of creating a mortgage for any property.

8. The learned Counsel for the petitioner has however clarified that in the prayer the deed no.5568/2007 is wrongly written as 8868/2007.

9. Shri Sharma, learned Standing Counsel of the respondent bank has fairly submitted that fraud was committed upon the bank which led to the present action. He however, defends the action of invoking the SARFAESI Act as public money is involved.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. Certain things are not in dispute. It is not in dispute that the petitioner had purchased a property by a registered sale Deed no. 5568/2007 dated 20.04.2007 from M/S. Gargi and Associates and the said sale deed is not the subject matter of any challenge till now. It is also not in dispute that on the strength of the registered sale deed, all subsequent action including procuring electricity connection and Holding No. were done by the petitioner. The action under the SARFAESI which was initiated vide the possession notice dated 12.10.2018 appears to be on the basis of an equitable mortgage created with the respondent bank on the basis of a Deed No.5916/2006 dated 03.06.2006. Though it is not the dispute that the aforesaid deed was prior in existence, what would be material to note is that whether an equitable mortgage could have been created at all by an agreement for sale.

12. It is a settled position that no right, title or interest can be transferred by a mere agreement for sale unless the same is followed by a sale deed. In this connection, reference will be made in Section 54 of the Transfer of Property Act which defines Sale. For ready reference, the said provision is extracted hereinbelow:

> "*Section 54. 'Sale' defined.—*
>
> '*Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*
>
> *Sale how made.—*
>
> *Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
>
> *Contract for sale.—*
>
> *A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*
>
> *It does not, of itself, create any interest in or charge on such property.*"

13. The statute itself makes it clear that a contract for sale of immovable property does not by itself create any interest in or charge on the property. In this connection, one may gainfully rely upon the case of ***Narandas Karsondas Vs. S.A. Kamtan*** reported in ***(1977) 3 SCC 247*** and the following observations have been made by the Hon'ble Supreme Court.

> "*32. A contract of sale does not of itself create any interest in, or charge on, the*

property. This is expressly declared in Section 54 of the Transfer of Property Act…."

14. In the aforesaid case, the Hon'ble Supreme Court has referred to an earlier decision reported in ***AIR 1967 SC 744*** [Ram Baran Prasad Vs. Ram Mohit Hazra] wherein the following observations were made in the context of Section 54:

> "*11…*
>
> …
>
> *Reading S. 14 along with S. 54 of the Transfer of Property Act it is manifest that a mere contract for sale of immoveable property does not create any interest in the immoveable property and it, therefore. follows that the rule of perpetuity cannot be applied to a covenant of pre-emption even though there is no time limit within which the option has to be exercised…."*

15. The aforesaid deed no. 5916/2006 is without any ambiguity, an agreement for sale between M/S. Gargi and Associates and one Pranjal Kumar Bhoralee. It is not understood as to how an equitable mortgage/security interest could be created on the basis of such a deed by respondent Bank.

16. We have also noted that the petitioner is apparently not connected with the loan advanced by respondent Bank to the erstwhile respondent no.5 and therefore *prima facie,* the invocation of the SARFAESI Act *qua* the petitioner appears to be without any jurisdiction.

17. In view of the above, the instant writ petition stands allowed. Accordingly, the impugned order dated 14.02.2019 issued by the Additional District Magistrate, Kamrup(M) and notice dated 16.02.2019 issued by the UCO Bank are interfered with and held to be not applicable to the petitioner and the property concerned.

18. The present order of allowing the writ petition would however not come into the way of the respondent Bank to initiate appropriate action for recovery

of the money from the borrower/guarantor strictly in accordance with law.

JUDGE **JUDGE**

Comparing Assistant