

GAHC010061682019



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

Advocate for the Respondent : MR. N. BORUAH

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 07.06.2023

Heard Mr. U. K. Nair, learned senior counsel, representing the petitioner.

By filing the instant writ petition, the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short), initiated by the respondent bank on the assets of the

petitioner, are challenged on the ground that the petitioner is neither the borrower nor the guarantor towards the loan taken by the respondent no. 5. It is contended by the learned counsel for the petitioner that the loan was sanctioned to respondent no. 5 on the basis of a deed of agreement for sale entered into between the respondent no. 5 and M/s Gargi & Associates Pvt. Ltd. It is further contended that, as a matter of fact, the petitioner purchased the flat in question from the respondent no. 5 in the year 2007 vide registered sale deed No. 5568, executed on 23.04.2007. However, the loan was sanctioned to the respondent no. 5 on the basis of a deed of agreement for sale executed in the year 2006 between respondent no. 5 and M/s Gargi & Associates Pvt. Ltd., to which the petitioner was not a party. It is also contended that such deed of agreement for sale does not confer any title and thus, it cannot be used as secured assets by the respondent Bank for grant of loan.

None has appeared on behalf of the respondents despite service of notice. Thus, the writ petition is admitted.

Admit.

Fresh steps for service of notice upon the respondents be taken within seven days, whereupon process shall be issued to them.

The *ad interim* order dated 20.03.2019 is affirmed to last till disposal of the writ petition.

JUDGE

CHIEF JUSTICE

Comparing Assistant