GAHC010103622026

2026:GAU-AS:16275

IN THE GAUHATI HIGH COURT

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

FAO No. 32 of 2026

SUDIP PAITYA
S/O LATE SUDHANGSHU SEKHAR PAITYA,
R/O HOUSE NO. 76, 1ST LINK ROAD, P.O. AND P.S. SILCHAR, DIST- CACHAR, ASSAM.

.....Appellant

VERSUS

PUNJAB NATIONAL BANK AND 3 ORS.
A STATUTORY BODY INCORPORATED AND GOVERNED UNDER THE PROVISION OF BANKING REGULATIONS ACT, 1948 AND ALSO CONTROLLED BY THE GOVERNMENT OF INDIA VIDE BANKING NOTIFICATION ACT, 1971 HAVING ITS HEAD OFFICE AT DELHI AND CARRYING BANKING BUSINESS THROUGH VARIOUS BRANCHES AND IN PRACTICAL, A BRANCH AT FANCY BAZAR, GUWAHATI, ASSAM AND AT HOSPITAL ROAD, SILCHAR, REPRESENTED BY ITS MANAGING DIRECTOR

2:THE AUTHORIZED OFFICER PUNJAB NATIONAL BANK FANCY BAZAR BRANCH (00130) L.I.C. BUILDING S.S. ROAD GUWAHATI PIN- 781001 ASSAM.

3:ASST. GENERAL MANAGER PUNJAB NATIONAL BANK FANCY BAZAR BRANCH (00130) L.I.C. BUILDING S.S. ROAD GUWAHATI PIN- 781001 ASSAM.

4:THE AUTHORIZED OFFICER CUM CIRCLE HEAD PUNJAB NATIONAL BANK CIRCLE OFFICE CENTRAL ROAD SILCHAR OPPOSITE TO VISHAL MART P.O. AND P.S.- SILCHAR DIST- CACHAR ASSAM.

*.....**Respondents***

: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant(s) **:** Mr. D. Mozumder, Senior Advocate
: Mr. C Gogoi, Advocate

For the Respondent(s) **:** Mr. A Parvez, Advocate

Date of Hearing **: 20.08.2026**

Date of Judgment **: 06.11.2026**

JUDGMENT& ORDER

[1] Heard Mr. D. Mozumder, the learned Senior Counsel, assisted by Mr. C. Gogoi, the learned counsel for the appellant. Also heard Mr. A. Parvez, the learned counsel for the respondents.

[2] This appeal under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 has been filed by the appellant, Sri Sudip Paitya, impugning the order dated 05.05.2026, passed in Misc.(J) Case No. 205/2022 in connection with Title Suit No. 163/2022, by the Court of the learned Civil Judge (Senior Division) No. 1, Cachar, Silchar whereby, the application filed by the present petitioner under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, praying for grant of temporary injunction against the respondents during the pendency of Title Suit No. 163/2022 was rejected by the trial court.

[3] The facts relevant for the consideration of the instant appeal, in brief, are that the present petitioner, as plaintiff, has filed the Title Suit No. 163/2022, praying for a decree of declaration of his right, title and interest over the suit property as well as a declaration that the suit property is not mortgaged with the defendants, along with grant of permanent injunction restraining the defendants from taking physical possession of the suit property.

[4] The present appellant is a permanent resident of District Cachar in the State of Assam and his mother, namely, Late Niyoti Paitya was the owner of a plot of land measuring 8 *kathas*, 18 *gondas* in 2nd RS Patta No. 27, Dag No. 139 of Pargona Barakpar, Mouza Kanakpur Pt. II. The mother of the plaintiff (appellant) had purchased the aforesaid land by virtue

of two separate registered sale deeds. After the death of her mother the appellant inherited half of the share in the aforesaid land and half belonged to his brother Sandip Paitya. However, later on, the appellant purchased 4 *kathas* 9 *lechas* of the land from his brother by sale deed No. 4133 and thus become absolute owner of 8 *kathas* 18 *gondas* of land.

[5] The appellant had applied for loan in the Punjab National Bank and for procuring that loan, he mortgaged a plot of land measuring 8 *kathas*, 18 *gondas* together with structures standing thereon covered under 2nd RS Patta No. 27, Dag No. 113 in Pargona Barakpar, Mouza Kanakpur Pt. II in the District of Cachar. After availing the said loan, the petitioner defaulted in paying the instalments and the defendant bank declared the loan account of the petitioner as NPA on 30.11.2018. Thereafter, on 07.01.2019 the defendant bank issued demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(hereinafter referred to as SARFAESI ACT).

[6] After issuance of possession notice on 19.07.2019, the defendant bank issued one sale notice on 29.09.2020. Being aggrieved by the said notice dated 29.09.2020, the present petitioner preferred a securitization application before the Debt Recovery Tribunal at Guwahati, which was numbered as SA No. 48/2020. However, due to non-appearance of the engaged counsel of the petitioner, the said SA No. 48/2020 was

dismissed for default. Subsequently, the respondent/bank issued e-auction sale notice on 08.07.2021 in respect of the mortgaged land measuring 8 *kathas* 18 *gondas* and affixed a banner of the bank on the outer gate of the said property with remarks that the property belongs to the Punjab National Bank.

[7] However, thereafter, on 30.08.2022, the respondent/bank affixed a banner with remarks "the property belongs to the Punjab National Bank" on the outer gate of the suit property which was covered by Dag No. 113 of RS Patta No. 27, which was purchased by the present appellant by a separate sale deed bearing No. 2286 dated 13.05.2008, and same was never mortgaged to the bank. The said property is in no way connected with the possession notice dated 19.07.19 or the e-auction sale notice dated 08.07.2021. As such, the present appellant approached the court of learned Civil Judge (Senior Division No. 1), Cachar by filing Title Suit No. 163/2022 as well as Misc. (J) Case No. 205/2022 seeking declaratory relief as well as injunction. However, by the impugned order dated 05.05.2026, passed in Misc. (J) Case No. 205/2022, the Trial Court has rejected the prayer for grant of temporary injunction mainly on the plea that SA No. 48/2020 is pending before the Debt Recovery Tribunal wherein the present appellant has questioned the actions of the respondent bank initiated under SARFAESI Act.

[8] Mr. D. Mozumder, the learned Senior Counsel for the petitioner has submitted that the property in respect of the Title Suit No. 163/2022 has been filed by the present appellant was not mortgaged to the respondent bank for securing loan from them. He submits that the appellant does not have any objection if the bank proceeds with selling the property of the appellant which was mortgaged with the bank, however, he submits that the personal property of the appellant which is the subject-matter of the aforesaid title suit may be taken over and sold by the bank under Section 25 (aa) of the Recovery of Debts and Bankruptcy Act, 1993 only if the property which is already mortgaged with the bank is not sufficient to satisfy the outstanding debt of the present appellant.

[9] He submits that merely because Section 25 (aa) of the Recovery of Debts and Bankruptcy Act, 1993 empowers the Recovery Officer the taking of possession and selling the property over which security interest is created as well as the other property of the debtor, said power may not be arbitrarily exercised. He submits that the said powers may be exercised only if the secured assets failed to fetch the money required to satisfy the outstanding loan amount. In support of his submissions, the learned Senior Counsel for the appellant has cited a ruling of the High Court of Karnataka in the case of ***"Mohan Bhandar Saraswathi Puram Vs. Vijaya Bank & Ors."*** reported in "***2018 SCC Online Kar 4266***."

[10] The learned Senior Counsel for the appellant has further submitted that from the affidavit-in-opposition filed by the respondent bank in this appeal, wherein they have categorically pleaded that by order dated 09.04.2021, the Debt Recovery Tribunal, Guwahati has dismissed the SA No. 48/2020 for non-prosecution. It also categorically states that a subsequent SA filed by the present appellant before the Debt Recovery Tribunal, Guwahati, which was registered as SA No. 40/21 was also dismissed on 09.03.2023. As such, on the date of passing interim order in Misc.(J) Case No. 205/2022, no securitization application filed by the present appellant was pending before the Debt Recovery Tribunal. Hence, he submits that the reason shown by the Trial Court regarding pendency of SA No. 48/20 before the Debt Recovery Tribunal, Guwahati is apparently perverse and justifies interference by this court with the impugned order. Hence, he prays for setting aside the impugned order and remanding the matter back to the trial court to decide the Misc. Case afresh after hearing both the sides.

[11] On the other hand, Mr. A. Pervez, the learned counsel for the respondent bank has submitted that though the SA No. 48/20 has been dismissed for default by the Debt Recovery Tribunal, Guwahati, however, the impugned order does not warrants any interference by this court as the matter is pending before Debt Recovery Tribunal, Guwahati under SARFAESI Act and Section

34 of the said Act bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or Appellate Tribunal are empowered by the said Act to determine. He submits that the bar on civil court also operates in granting injunction in respect of any action taken or to be taken in pursuance of any power conferred under SARFAESI Act, 2002 or under the Recovery of Debts Due to Banks and Financial Institution Act, 1993. Hence, he submits that the instant appeal is liable to be dismissed.

[12] The learned counsel for the respondent bank submits that under Section 25 (aa) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993, the Recovery Officer made a possession and sale any other property of the debtor apart from secured assets. He submits that presently, recovery proceedings for recovery of an amount of Rs. 1,61,45,292.54 from the present appellant is pending before the Recovery Officer, DRT, Guwahati. He submits that future interest @ 10.50% per annum is also accrued on the aforesaid amount which would enhance the total outstanding dues; hence, apart from secured assets the Recovery Officer may take possession of the other properties of the appellant to ensure that the outstanding dues in the name of the appellant may be liquidated. As such, he submits that there is no justification for this court to interfere with the impugned order, hence, he prays for dismissing the instant appeal with exemplary cost.

[13] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[14] On perusal of the materials on record, it appears that the Trial Court has rejected the injunction application filed by the present appellant mainly because the appellant had filed an SA No. 48/2020 before the Debt Recovery Tribunal and the property in respect of which possession notice of the respondent bank has been issued is pending for adjudication before Debt Recovery Tribunal, Guwahati.

[15] Though, on perusal of records, it appears that both the securitization applications filed by the present appellant before the Debt Recovery Tribunal, Guwahati namely, SA No. 48 /20 and SA No. 40/21 have been dismissed by the Debt Recovery Tribunal. However, it also appears that recovery proceedings for recovery of an amount of Rs. 1,61,45,292.54 from the present appellant is pending before the Recovery Officer, DRT, Guwahati.

[16] For the sake of convenience, Section 25 of theRecovery of Debts Due to Banks and Financial Institution Act, 1993, which is relevant in this regard,is reproduced here in below: -

25. Modes of recovery of debts.

> *- The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:*
>
> ***(a)****attachment and sale of the movable or immovable property of the defendant;*
>
> ***(aa)****[taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same;] [Inserted by Act No. 44 of 2016.]*
>
> ***(b)****arrest of the defendant and his detention in prison;*
>
> ***(c)****appointing a receiver for the management of the movable or immovable properties of the defendant.*
>
> ***(d)****[any other mode of recovery as may be prescribed by the Central Government.] [Inserted by Act No. 44 of 2016.*

[17] From the above statutory provisions, it appears that though, the suit property in the Title Suit No. 163/2022 is not the secured asset in respect of the aforesaid loan amount of the appellant, however, under Section 25(aa) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 the Recovery Officer has power of taking possession of secured assets of the debtor as well as also of any other property of the debtor and to appoint receiver for such property and to sell the same. Obviously, the sense of fairness demands that the Recovery Officer should first make attempt to liquidate the outstanding loan of the debtor by taking possession and selling

the secured assets only and if even after that there remains outstanding amount against the loan amount the other property of the debtor may also be taken possession of and sold.

[18] However, under the facts and circumstances of this case, the question before this Court is as to whether the Trial Court was correct in denying the grant of temporary injunction against the respondent bank during the pendency of Title Suit No. 163/2022, as was prayed for by the present appellant.

[19] We have discussed in the foregoing paragraphs that under the provisions contained in Section 25(aa) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Recovery Officer has the power of taking possession of secured assets as well as unsecured assets of the debtor to realise the outstanding dues from the appellant (debtor).The provisions contained in Section 34 of the SARFAESI Act, 2002 is relevant in this context and as such, same is reproduced hereinbelow:

> ***"34. Civil court not to have jurisdiction—***
> *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in*

respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993."

[20] On perusal of the aforesaid statutory provision, it appears that if an authority has taken any action which it is empowered to take under the SARFAESI Act, 2002 or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, no Civil Court shall grant any injunction in that matter.

[21] In the instant case, apparently, a recovery proceeding for recovery of an amount of ₹1,61,45,292.54 from the present appellant is pending before the Recovery Officer, DRT, Guwahati. As such, in the event of any secured asset mortgaged with the bank not fetching the amount required to liquidate the outstanding dues of the appellant, the Recovery Officer may be well within its power under Section 25 (aa) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to take possession, appoint receiver, and sell any other property of the appellant.

[22] As such, the bar contained in Section 34 of the SARFAESI Act is applicable in the instant case also, and hence, the Trial Court cannot be faulted with in rejecting the prayer for grant of temporary injunction during the pendency of Title Suit No. 163/2022.

[23] In view of the discussions made and reasons stated in the foregoing paragraphs, this appeal is found to be devoid of any merit and accordingly dismissed. The appellant shall, however, be at liberty to approach the Debt Recovery Tribunal, Guwahati for seeking fair exercise of power under Section 25 (aa) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by the Recovery Officer, DRT, Guwahati in dealing with personal property of the appellant which was not mortgaged to the respondent bank.

[24] The parties are left to bear their own cost.

[25] Let a copy of this judgment be sent to the Trial Court for information.

JUDGE

Comparing Assistant

Munmun Boruah

Digitally signed by Munmun Boruah
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