

HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE

DISTRICT: SONITPUR

IN THE COURT OF MUNSIFF NO. 2, SONITPUR,
TEZPUR

Present: **Smti Priyanka Saikia, AJS,**
Munsiff No.2

This the 29th day of October, 2022

Title Suit No. 64/2014

1(a). Smti Mamata Lahkar

W/o- Lt. Badan Ch. Lahkar

1(b). Sri Bhaskar Jyoti Lahkar

S/o- Lt. Badan Ch. Lahkar

1(c). Sri Manash Lahkar

S/o- Lt. Badan Ch. Lahkar

1(d). Sri Amit Jyoti Lahkar

S/o- Lt. Badan Ch. Lahkar

All are R/o- Village Nepalipatty

P.O. & P.S.- Tezpur

Dist- Sonitpur, Assam

1(e). Smti Mousumi Patgiri

W/o- Sri Dipjyoti Patgiri

R/o- Pub- Sarania, Guwahati

Kamrup, Assam

---Plaintiffs

-versus-

1. United Commercial Bank Ltd.

CASE NO: T.S. 64/2014

Having its Head Office at 10, BTM, SARANI,
BRABOURNE ROAD, CALCUTTA- 700001

**2. The Branch Manager, UCO BANK
LTD., Tezpur Branch**

Main Road, Dist- Sonitpur, Assam

---Defendants

This is a suit came up for final hearing on 30-09-2022 in presence of following Advocates:

Counsel for Plaintiffs : Sri S.K. Singh

Counsel for Defendants: Sri Subhash Ch. Acharya

And having stood for consideration to this day, the Court delivered the following Judgment:-

J U D G M E N T

This is a suit for declaration that notices under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 16-02-2005 and 12-06-2006 issued by the defendant bank is illegal, inoperative and not bindings upon the plaintiffs and for permanent injunction.

Plaintiff's case in brief:

1. That the plaintiff had a proprietary firm in the name and style as M/s Janata Press engaged in the business of printing. The defendant is a banking company having its principal office in Kolkata with having one of its branch offices at Tezpur.

2. That from its establishment since 1969 and prior to that 1957, the plaintiff, in the name and style of M/s Janata Book Stall, has been maintaining account with the opposite parties and both the plaintiff and the defendant were in very good terms with each other.

3. That the plaintiff has since then on many occasions availed credit facility from the opposite parties which were paid up completely by 1996. On 27/11/2001, the plaintiff had availed a Term Loan in the name of his then proprietary firm of a sum Rs. 6,00,000/- (Rupees Six Lakhs) only from the opposite parties through its Tezpur Branch and the same was credited into account of the plaintiff bearing No SSI/05/01-02. The plaintiff paid an amount of Rs. 40,000/- on 15/03/2002 against the said loan.

4. That, in the meantime, the plaintiff suffered heavy loss in his business due to change of technology in printing field and for which the repayment of the said loan could not be sufficiently made during that period. As a result, the opposite parties served the plaintiff with a notice dated 18/06/2002 intimating thereby that an amount of Rs. 5,90,861/- was due to the opposite parties against the said loan. After receiving the said notice, the plaintiff had explained to the officials of the opposite parties about the hard time being faced by him and assured them of repayment of the entire loan. Accordingly the plaintiff, on various occasions, deposited whatever amount he could

manage in the said account in discharge of the said loan. Despite of such deposit, the opposite parties, to the utter shock and surprise of the plaintiff, had served a notice dated 16/02/05 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 upon the plaintiff intimating him that the said loan has been declared as NPA (non performing asset) by the opposite parties. The opposite parties thereby further demanded of the plaintiff an amount of Rs. 13,77,000/- (Rupees Thirteen Lakhs Seventy Seven Thousand) only as outstanding liability due to the bank against the said loan within 60 days of the date of the said notice. This notice was an illegal one which transpired subsequently.

5. That the plaintiff was shocked to know that he was liable for such an exorbitant amount by the opposite party. Such outstanding amount demanded by the bank was absurd in as much as till June 2002 the outstanding amount was Rs. 5,90,861/- as demanded by the bank vide notice dated 18/06/02 and even if it is assumed that the plaintiff had not paid a single penny in discharge of the loan since 18/06/2002 to 16/02/2005, yet in no way the liability of the plaintiff could touch the figure so demanded, i.e. Rs. 13,77,000/- (Rupees Thirteen Lakhs Seventy Seven Thousand) only. The plaintiff went to the bank authority and expressed deep dissatisfaction upon such act on the part of the opposite parties and he requested them to

make an inquiry into the matter and make necessary correction so that the reputation of the opposite parties/defendants and its relationship with the plaintiff remains intact.

6. That the opposite parties then again sent a notice on 21/09/05 to the plaintiff and this time they changed the outstanding amount to Rs. 9,98,976/- which was again excessive in the wake of payments made by the plaintiff. When enquired by the plaintiff, the defendant failed to explain as to how they calculated the said amount. By demanding such amount the opposite parties denied the payments made by the plaintiff during the period 18/06/2002 and 21/09/2005 in as much as the amount claimed by them includes the entire amount which was due till 18/06/2002 along with interest thereupon till 21/09/2005. When the plaintiff raised objection about the same and asked for the account statement for that period, the opposite parties replied that the record of the said period had got erased from their computer due to some technical defect in software and assured the plaintiff that they would reconsider the matter and get the figure corrected after making due investigation. But the opposite parties did not turn up in that regard rendering the plaintiff unable to repay the loan as the exact figure of the amount to be repaid was uncertain.

7. That the opposite parties again sent a notice to the plaintiff on 31/03/2006 for repayment of the said loan. But

the plaintiff, finding it difficult to figure out the exact amount to be repaid due to the alleged loss of record of the bank as aforesaid, approached the bank authority once again and raised the matter with them. In the meantime, the plaintiff suffered heavy loss in business and he had to close his press in the wake of heavy financial crisis. The plaintiff as such, had asked the opposite parties for some relaxation of time and further requested them to figure out the exact amount to be repaid. In the premises above, the opposite parties asked the plaintiff to pay at least Rs. 2,00,000/- (Rupees Two Lakhs) only for the time being and to pay the remaining amount after the exact outstanding amount is ascertained. Accordingly the plaintiff paid Rs. 2,00,000/- (Rupees Two Lakhs) only to the opposite parties on 31/03/2006.

8. That the opposite parties, in spite of ascertaining the exact amount to be refunded by the plaintiff, had sent another notice dated 12/06/2006 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and this time they overstepped the limits. In addition to an excessive, unexplained outstanding amount of Rs. 8,81,297/- (Rupees Eight Lakhs Eight One Thousand Two Hundred and Ninety Seven) against the said loan, the said notice reflected a Cash Credit outstanding of Rs. 5,72,117.50 (Rupees Five Lakhs Seventy Two Thousand One Hundred and Seventeen) only due to the bank by the

plaintiff. The plaintiff had never obtained any cash credit facility from the opposite parties at any point of time and he was shocked to find out such a huge outstanding amount in respect of a debt which he has never incurred. This demand was unjustified and illegal as this plaintiff had not taken any such facility. This plaintiff then could not realize the internal failure in the banking system of the opposite parties going on at its Tezpur Branch.

9. That the plaintiff enquired with the opposite parties in this regard and asked them to show any document in proof of extension of such Cash Credit and withdrawal of the same by the plaintiff. The plaintiff further asked for the documents which allegedly had been executed by him while obtaining the alleged Cash Credit facility. The opposite parties failed to show any such document in proof thereof. It is pertinent to mention here that at that relevant point of time (when the alleged Cash Credit facility was extended) the then Branch Manager of the opposite parties, Sri Diganta Chakraborty, had done huge misappropriation of money due to which he had to subsequently face criminal prosecution and had to undergo imprisonment. It was admitted by the bank authority that all the irregularities appearing in the loan statement, loss of bank record and debit of the plaintiff's account with such cash credit are consequences of such fraudulent act on the part of Sri Diganta Chakraborty. These facts were discovered only later on when the matter was investigated

by the CBI and number of Charge Sheets were submitted by them against the then Branch Manager before the Special Court in Guwahati. The criminal cases against the Manager are still going on in Guwahati.

10. That the aforesaid act of debiting the plaintiff's account in a manner as aforesaid, on the part of the opposite parties amounts to forgery and the plaintiff could have easily initiated a criminal proceeding against the opposite parties. But considering the length of good relationship with the bank, the plaintiff did not find it conducive to take such stringent measure and he, instead, discussed the matter with the opposite parties to sort out the problem amicably. Further, this plaintiff is an octogenarian and a patient of Parkinson disease. He cannot file a case and continue with the same at the fag end of his life. The plaintiff again requested the bank authority to get the figure corrected so as to enable him to repay the genuine outstanding amount against the term loan availed of by him. The opposite parties assured the plaintiff that the said errors shall be corrected and the corrected figure shall be intimated to the plaintiff at the earliest.

11. That the opposite parties failed to give any intimation to the plaintiff explaining the objections raised by the plaintiff in respect of the notice dated 12/06/06 as mentioned in the preceding paragraphs. The defendant did not explain the rationale behind the claim of Rs. 8,81,297/- (Rupees Eight Lakhs Eighty One Thousand Two Hundred

and Ninety Seven) made against the term loan availed of by the plaintiff. The defendant did not intimate anything to the plaintiff as to the objection raised by him in respect of the validity of said Cash Credit and outstanding amount thereof.

12. That the opposite parties had sent the notice under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 12/06/2006 and the plaintiff in response approached the opposite parties and given explanation to such notice as aforesaid. But even after expiry of almost 7 years the opposite parties has not given any intimation as to whether such explanation has been accepted or rejected. It is pertinent to mention here that during this period, the plaintiff, on several occasions, has made written representations to the opposite parties regarding the matter but there was no response on the part of the opposite parties till date. The opposite parties actually had no record, no data and no authentic document to support their fraudulent claim and hence even after expiry of 7 years of such notice and several explanations thereto, the opposite parties is not able to file any explanation, acceptance or rejection in that regard.

13. That the plaintiff, despite of such response from the opposite parties had made several payments on several dates viz. Rs. 1,50,000/- on 12/11/2008, Rs. 15,000/- on 19/08/09, Rs. 8,000/- on 25/11/09, Rs. 1,00,000/- on

20/04/10 and Rs. 1,25,000/- on August 2010, in discharge of the said Term Loan. The plaintiff had even made a representation to the opposite parties in the month of August 2010 with a proposal for full and final One Time Settlement of the term loan offering an amount of Rs. 5,00,000/- only but the opposite parties has not responded to such offer and did not intimate the plaintiff whether such offer has been accepted or rejected.

14. That despite of such vast anomalies, fraudulent acts, non compliance of provisions of law and non-responsive attitude on the part of the opposite parties, the plaintiff had made several attempts to discharge his debt. But, to his utter shock and surprise, the plaintiff has found that the defendant has initiated process to seize the property mentioned in the schedule below. The said property had been mortgaged by the plaintiff against the Term Loan but the plaintiff has initiated process for seizure of the same against the Cash Credit Loan too which was neither obtained nor ever secured by the plaintiff with the said property.

15. That the opposite parties is preparing to seize the said property on the basis of notice dated 12/06/2006 under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The seizure, if allowed, would be illegal and fraudulent in as much as the said notice also include the Cash Credit Outstanding amount which has

been fraudulently debited into the account of the plaintiff and the defendant bank could not give any explanation in respect of such debit. Further, such seizure would be illegal in as much as the said property was never mortgaged by the plaintiff to secure the alleged Cash Credit facility. Any action initiated on the basis of the notice issued u/s 13 of the aforesaid act has also become time barred.

16. That the said property could only be seized against default in payment of the Term Loan by following the procedure laid down in that regard and before seizure of such property a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has to be served exclusively in respect of the Term Loan. The notice was bad it included an alleged default amount of a fraudulent Cash Credit account.

17. That the opposite parties/defendants sent the said notice for payment of both the outstanding amount regarding Term Loan and the alleged Cash Credit thereby disabling the plaintiff to make full and final payment. The alleged Cash Credit advance being fraudulent, the notice demanding the repayment thereof itself is illegal. Further the notice has not been served in compliance with the provisions of law. The said notice under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been served much earlier than the declaration of the plaintiff's

account as a non performing asset and the same is bad in the eye of law. The notice was served on 12/06/06 but the account of the plaintiff has been declared a non performing asset on 30/06/06. Further, the said notice was not signed by any authorized officer in that behalf. Hence, any seizure of property on the basis of such notice served in respect of fraudulent loan is bad in the eye of law and needs to be stayed.

18. That, in the meanwhile, the opposite parties has written a letter dated 11/07/2014 bearing No. UCOTEZ/REC/SARFEASI/74/2014-15 to the plaintiff intimating therein of having engaged M/s RBM ASSOCIATE, an enforcement agency, for taking physical possession of the mortgaged property. This plaintiff with his entire family has been residing in a residence situated over the mortgaged property. If the enforcement agency is not restrained from taking forcible physical possession of the mortgaged property, this plaintiff at the far end of his life will be rendered homeless and he and his entire family will be on the street for no fault of their own. The acts on the part of the bank is one sided. Despite the fact that there were clear manipulation in the opening of the cash credit facility and the amount under the said facility was never withdrawn by the plaintiff, this plaintiff is being made liable to pay the same with interest. The bank has tried to cover up the manipulations and the fraudulent acts committed by their own persons and has always assured this plaintiff of

looking into the matters without genuine intention of correcting the defects and booking the culprits. This plaintiff believed the words of responsible officials of the bank. The plaintiff deserves protection since he has not been a part of the fraud and has always wished to pay the genuine claims of the bank and in furtherance of the genuine will of the plaintiff; he has made payments from time to time. Had the bank paid attention to his request of looking into the manipulations and offer of one time settlement, the whole matter would have been settled by now.

19. Hence, the instant suit.

The Gist of Defendants case:

20. That the suit is not maintainable in its present form and not tenable under Section 34 of the Securitisation and Re- Constitution of Financial Assets and Enforcement of Security Interest Act of 2002, in as much as no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under the said Act to determine. Hence this Hon'ble Court has no jurisdiction to entertain or to try this suit under Section 34 of the said Act as also under Section 9 of the Civil Procedure Code there being express bar to such suit.

21. That there is no cause of action for the suit, not tenable and maintainable under law and equity and barred

by the limitation and bad for principles of waiver, Estoppel and Acquittance.

22. The defendant stated that the plaintiff not only availed of Cash Credit Loan from the defendant Bank and that whether the plaintiff paid an amount of Rs. 2,000 on 15/03/2002 are all matters of records to be proved by the plaintiff. The fact is that the plaintiff was very negligent in repayment in his loan account when loan amount stood at Rs. 5,90,861/- a notice dated 08/06/2002 sent to the plaintiff asking for the payment. The defendant having failed to recover the amount again sent a notice dated 16/02/2002 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 giving the plaintiff 60 days time for the repayment. The notice was not illegal as claimed by the plaintiff.

23. Further the defendants submitted that the plaintiff after obtaining the loan from the defendant bank was deliberately negligent in repayment of the loan amount. As a result of which the outstanding balance on the loan account was on the rise which resulted from the non payment of the loan amount and the plaintiff did not be shocked and he was well aware that the loan amount will rise to the extent of Rs. 13,77,000/- and it falsely stated that the plaintiff went to the bank expressed the dissatisfaction. All the statements are made to defraud the bank. The defendant served time and again notices for

repayment of the loan amount but the plaintiff with this and that pretext avoided repayment in the loan amount of the plaintiff that in respect of payment of Rs. 2 Lakhs made by the plaintiff to the defendant bank on 31/03/2006 is a matter of record to be proved by the plaintiff. The plaintiff having failed to repay the loan the defendant was compelled to issue notice dated 12/06/2006 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 demanding repayment of the outstanding dues in the loan account of the plaintiff but the plaintiff without making any payment in the loan account of the plaintiff resorted to dilatory tactics by filing the suit. The plaintiff neither visited the bank nor replied to the notice given under Securitisation Act.

24. Defendant states that the plaintiff never approached the bank to inquire about the status of the loan accounts. And in respect of the criminal cases against Sri Diganta Chakraborty the then Branch Manager in CBI Court Guwahati are all matters of record to be proved by the plaintiff.

25. That the plaintiff had to initiate proceedings under Securitisation Act because the plaintiff always avoided in making payment. The defendant did not make any irregularities in issuing notice and demanding the outstanding loan amounts.

26. The defendant states that whether the plaintiff made payment in the loan accounts till August 2010 all matters of records to be proved by the plaintiff. The plaintiff did not make any representation to the defendant with a proposal for full and final settlement of the term loan offering an amount of Rs. 5 Lakhs. This statement of the plaintiff is totally false and baseless.

27. The defendant states that the plaintiff at the time of obtaining loan mortgaged his immovable properties (land and building) as collateral security against the loans. While notice was send as per law for seizure of the house, the plaintiff became active in delaying the proceeding initiated under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The fact is that the plaintiff mortgages his immovable property against the loan he obtained from the defendant bank. That the defendant bank has not committed any illegality in issuing notice to the plaintiff under SARFAESI Act. The defendant has been compelled to take such steps because the plaintiff did not pay regularly for liquidation of the loan amount.

28. The defendant bank states that the issuance of notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the plaintiff is proper and right as because the plaintiff became very irregular in payment towards loan account. That there is no such law

that notice can be issued under the said Act only after declaring an loan account as non performing assets, the notice was signed by the proper person.

29. The defendant bank states that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has empowered the bank to take steps against the defaulting borrower and to seize mortgage properties in case the plaintiff borrower defaults in making payment in the loan account. It is admitted that while the borrower defaults in making payment in loan accounts, the defendant bank has right to engage enforcement agency for taking physical possession of the mortgage property.

30. That the plaintiff while mortgaged his property with the bank was well aware that it was a residential property. The plaintiff deliberately and intentionally has avoided in making payment and that is why the bank has to take strong steps against the plaintiff for recovery of the outstanding balance. If the bank is restrained from taking legal action against the plaintiff, the defendant bank will suffer irreparable loss, harm and injury. That bank has in no way made frauds, rather the defendant bank has given loan to the plaintiff which the plaintiff also has admitted in the plaint time and again. That the plaintiff is not entitled to get any protection from the court as the court has not jurisdiction in interfere in a matter where bank initiate proceedings under Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 as the court is barred under Section 34 of the said Act to try any suit a proceedings initiate against the defaulting borrower under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and hence the suit is liable to dismissed.

31. Upon perusal of pleadings of both the sides the following were issues framed by my learned predecessors-in-office: Issues framed on 04-12-2014:

- i. Whether there is a cause of action for institution of this suit?
- ii. Whether the suit is maintainable?
- iii. Whether the Cash Credit account and dues shown in notice issued under Sec. 13(2) of SARFAESI Act, 2002 and all action under the said notice is fraudulent, illegal and null and void?
- iv. Whether the plaintiff has right, title and interest in the suit land? And if so whether the suit property is liable to be seized by the enforcement agency under SARFAESI Act?
- v. Whether the plaintiff is entitled to the decree as prayed for?
- vi. To what other relief/s plaintiff is entitled for?

32. During trial the plaintiff examined only the plaintiff No. 1(b) Bhaskar Jyoti Lahkar. He exhibited several documents. The defendant bank, however, did not examine the PW-1. I have heard the arguments of the learned Counsel for the Plaintiff.

33. The learned Counsel for the Plaintiff also referred the case of *Mardia Chemicals Ltd. vs. Union of India (AIR 2004 SC 2371)* the Hon'ble Apex Court while holding the validity of SARFAESI Act held that the jurisdiction of the Civil court can be invoked only to a very limited extent where the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe whatsoever.

DISCUSSION, DECISION & REASONS THEREOF

Decision on issue no. ii.

Whether the suit is maintainable?

34. As this issue is vital to this suit, the same is taken up for consideration at the outset before discussing the other issues.

35. The plaintiff has stated in his plaint that the SARFAESI Act does not cover the suit land as the plaintiff was not a mortgagor and hence the defendants cannot interfere with the right title and interest of the plaintiff on the plea of any mortgage with strangers not owner and possessor of the suit land.

36. The two Notice dtd. 16-02-2005 and 12-06-2006 were issued U/S 13(2) of the SARFAESI Act, Sec. 34 of the SARFAESI Act debars the Civil Court for exercising jurisdiction over the matters covered by the Act. This is a statutory notice and plaintiff can make necessary representation to the authority entrusted to look into such grievance, in order to have his grievance redressed. Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002) reads as follows : 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 injunctions 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 (51 of 1993).

37. Plaintiff No.1 Bhaskar Jyoti Lahkar (Pw1) admitted in his evidence in chief that his deceased father viz. Late Badan Ch Lahkar had availed a Term loan in the name of proprietary firm M/S Janata Press of a sum of Rs. 6,00,000/- (Rupees Six Lakh). Said PW-1 also admitted in his evidence in chief that they have not repaid the loan as yet inspite of demands made by the defendant bank and that on their failure to repay the loan amount the

defendant bank had issued possession notice as per SARFAESI Act. The defendant bank again on 18.06.2002 had initially issued a notice demanding Rs. 5,90,861/-. It was further admitted by PW-1 that two notice under Sec.13(2) SARFAESI Act, were issued on 16-02-2005 and 12-06-2006 and that vide said notices the defendant bank demanded amount of Rs. 13,77,000/- and Rs. 14,53,414.50/- respectively.

38. From the aforesaid admission it is clearly discernible that as the plaintiff failed to repay the loan availed by them as per terms and conditions of the loan the defendant bank issued notice under Sec.-13 (2) and thereafter when even after receiving notice under Sec.-13 (2) while the plaintiffs failed to repay the loan the defendant bank issued notice of symbolic possession of the mortgaged property inherited by the plaintiffs from their predecessor, in exercise of its power conferred on it by Section 13(4) of the Act.

39. Section 13 (2) of the Act provides for issuance of sixty days notice and Section 13 (4) provides for taking of symbolic possession of secured assets (in this case it is the suit property measuring 2 katha 4 lecha mortgaged with the defendant bank) where the borrower fails to discharge his liability in full within the period specified in Sub-Section 13 (2).

40. Section 17 of the SARFAESI Act, 2002 further provides for remedy in case any person including borrower

(here the plaintiffs) feels aggrieved by any of the measures referred to 6 in Sub-Section (4) of Section 13 taken by the Secured creditor (defendant bank) or his authorised officer. In such a case any person including the borrower may make an application to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

41. Now, conjoint reading of the provisions of Section 34 and Section 17 of the SARFAESI Act, 2002 make it very clear that in case the borrower (here the plaintiffs) feels aggrieved by the notices dated 16-02-2005 and 12-06-2006 (possession notices) issued by the secured creditor (here the defendant bank) the remedy for the same, if any, lies with the Debts Recovery Tribunal having jurisdiction in the matter and not before the Civil Court whose jurisdiction have been completely ousted by the provision of Section 34 of the SARFAESI Act, 2002 in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine.

42. In view of the foregoing discussion and settled position of law it is needless to say that the present suit seeking a declaration that the possession notices dated 16-02-2005 and 12-06-2006 is illegal, is barred under the provisions of Section 34 of SARFAESI Act, 2002 and accordingly this Court does not have jurisdiction to declare the possession notices dated 16-02-2005 and 12-06-2006 as illegal even if it is assumed, for the sake of argument,

that the notices dated 16-02-2005 and 12-06-2006 are illegal. Therefore, the Court is of the considered opinion that the plaintiff's suit is not at all maintainable in view of the provisions of Sec.34 of the SARFAESI Act. Hence, this issue is decided in negative in favour of the defendants.

43. As this issue is decided in negative hence, there is no point discussing the other issues framed.

ORDER

44. The suit is dismissed on contest with cost. Let a decree be prepared accordingly.

Given under my hand and seal of this court on this 29th day of October, 2022.

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur

APPENDIX

Plaintiff's Witnesses:

PW1: Sri Bhaskar Jyoti Lahkar

Plaintiff's Exhibits:

Ext. 1: Copy of Ledger of the United Commercial Bank pertaining to Term Loan bearing no. SS9/05/01-02.

Ext. 2: Copy of notice by UCO Bank dated 18-06-2002.

Ext. 3: Copy of notice under SARFAESI Act by UCO Bank dated 16-02-2005.

Ext. 4: Copy of notice by UCO Bank dated 21-09-2005.

Ext. 5: Copy of notice under SARFAESI Act by UCO Bank dated 12-06-2006.

Ext. 6: Copy of valuation of the mortgage by Aitken Brothers, C.E. dated 22-11-2001.

Ext. 7(1) and 7(2): Copy of deposit slips dated 12-11-2008 and 20-04-2010.

Ext. 8: Copy of settlement of Term Loan Account dated 29-02-2012.

Ext. 8(1): Signature.

Ext. 9: Copy of notice by UCO Bank dated 11-07-2014.

Ext. 10: Copy of judgment and order of the Court of Special Judge, CBI, Assam, Additional Court NO-II, Chandmari, Guwahati – 3.

Defendant's Witnesses:

None

Defendant's Exhibits:

Nil

(Smt. Priyanka Saikia, AJS)

Munsiff No. 2

Sonitpur, Tezpur