

HIGH COURT OF SIKKIM  
Record of Proceedings

**WP(C) No. 31 of 2018**

**BIJAY KUMAR RAI AND ANR.**

**PETITIONER (S)**

VERSUS

**UNITED BANK OF INDIA AND ORS.**

**RESPONDENT(S)**

**Date: 06.08.2018**

CORAM:

**THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, A.C.J.**

For Petitioner(s) : Mr. Zangpo Sherpa and Mr. Sangay Gurmey  
Bhutia, Advocates.  
For Respondent(s)  
For R-1 : Mr. Rajen Upreti, Advocate.  
For R-2 & R-3 : Mr. Karma Thinlay, Sr. Govt. Advocate with  
Mr. Thinlay Dorjee, Govt. Advocate, Mr. S.K.  
Chettri and Mrs. Pollin Rai, Asst. Govt.  
Advocates.

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**ORDER**

**1.** Heard.

**2.** The Petitioners No.1 and 2 are husband and wife, with the  
Petitioner No.1 being the owner of an RCC building under Khatian No.  
13 bearing Plot Nos. 232 and 235 measuring 0.5250 hectares,  
situated at Chalamthang Block, Pakyong, East Sikkim. The  
Respondent No.1 sanctioned a loan of Rs.38,00,000/- (Rupees thirty-  
eight lakhs) only, in the year 2006 to the Petitioners on their  
application and the loan was transferred to them in November 2007,  
securing the loan by creating equitable mortgage of the property  
*supra*. The Petitioner No. 1 alleges that he had been regularly paying

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monthly instalments towards repayment of the loan despite which the Respondent No.2 issued a Notice under Section 14 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short 'SARFAESI Act') on 26.05.2018, which was received by the Petitioners on 22.06.2018 sans Notice under Section 13(2) of the same Act. Vide the Notice under Section 14 of the SARFAESI Act, it was informed that the secured assets, being the mortgaged property, would be taken possession of on 03.07.2018. In this context, the Respondent No.2 sought assistance of Respondent No. 3, the Superintendent of Police, East Sikkim. That, no Notice under Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 was also issued to the Petitioners.

**3.** Hence, in view of the alleged shortcomings as enumerated herein above, the Petitioners seek quashing of the impugned Notice of the Respondent No.2 and a Writ commanding the Respondents to desist from taking possession of the property. Further, to quash the Notice, if any, issued by the Respondent No.1 under Sections 13(2), 13(4) and 14 of the SARFAESI Act. It was also prayed that an interim order be passed to maintain status quo over the secured property of the Petitioner.

**4.** The Respondents No. 2 and 3, who had received advance Notice in the matter, were unable to assist the Court on 02.07.2018, the date on which the matter was taken up with regard to the

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contentions raised by the Petitioners. Consequently, they undertook to ensure that no coercive measures would be taken against the Petitioners till 06.07.2018. On the date so fixed, the relevant Bench being unavailable the matter was posted to 06.08.2018.

**5.** In the interim, the Respondent No.1 filed its Counter-Affidavit through the Chief Manager of the Bank on 02.08.2018. Learned Counsel for the Respondent No.1 submitted that the Writ Petition is not maintainable as the Petitioners have not come with clean hands since Notice under Section 13(2) of the SARFAESI Act had been issued in 2012 and steps being taken are a continuing process. Besides, it was urged that the Petitioners have a remedy before the Debts Recovery Tribunal, which they have already approached and on their failure to enter appearance, the matter stood dismissed therein. The Petitioners are, therefore, not entitled to any reliefs and the Petition be dismissed with exemplary costs.

**6.** Learned Counsel for the Respondents No.2 and 3 would support the stance of the Respondent No.1.

**7.** Learned Counsel for the Petitioners rebutted that although, Notice was served in the year 2012 which admittedly pertained to the same loan availed of against the same property mortgaged, it was incumbent upon the Respondents to have issued a fresh Notice thereafter to the Petitioners in view of the steps envisaged by the Respondents.

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**8.** Having heard the parties and on perusal of the pleadings and documents, it is apparent that vide letter dated 22.09.2012 to both the Petitioners, the District Magistrate, East District at Gangtok, had issued a Notice stating, *inter alia*, that on perusal of the documents submitted along with the application under Section 14 of the SARFAESI Act, from the Respondent No.1, it was found that Notice under Section 13(2) of the SARFAESI Act had been served upon them to which no representation/objection was made by the Petitioners. In addition, a Possession Notice under Rule 8(1) of the SARFAESI Rules was also served on the Petitioners and published in a local newspaper. The District Magistrate thereafter informed that the secured assets would be taken over on 17.10.2012. The Petitioners appear to have approached the Debts Recovery Tribunal, Guwahati, as evident from Annexure R1-2, dated 02.04.2013, filed by the Respondent No.1. The proceedings culminated in a dismissal on default of appearance of the Petitioners.

**9.** In such circumstances, it is evident that firstly, the Petitioners have not come with clean hands to this Court. Secondly, sufficient documentary evidence has been furnished by the Respondent No.1 to establish that Notice was issued under Section 13(2) of the SARFAESI Act, steps under Section 13(4) of the same Act initiated by the Respondents pursuant to which the Petitioners resorted to remedial measures before the Debts Recovery Tribunal, Guwahati, as envisaged under Section 17 of the SARFAESI Act.

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**10.** In consideration of the entirety of the facts laid out hereinabove, the Petition deserves to be and is accordingly dismissed and disposed of.

**Acting Chief Justice**  
**06.08.2018**

Index : ~~Yes~~ / No  
Internet : Yes / ~~Ne~~  
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