

GAHC010016352024



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

Case No. : WP(C)/520/2024

M/S VIVIK CYLINDER PVT LTD AND ANR
ABHYAPUR, COLLEGE NAGAR, NORTH GUWAHATI, GUWAHATI-30, DIST-
KAMRUP (M), ASSAM REPRESENTED BY ITS DIRECTOR, SRI RUPAK
MAHANTA

2: RUPAK MAHANTA
S/O LATE RANA PRATIM MAHANTA
R/O G.G. BARUAH ROAD
HOUSE NO. 36 2ND FLOOR SHANTI PATH
GEETANAGAR GUWAHATI-78102

VERSUS

THE ASSAM INDUSTRIAL CO OPERATIVE BANK LIMITED AND ANR
REPRESENTED BY ITS MANAGING DIRECTOR, S.S. ROAD, LAKHTOKIA,
PANBAZAR, GUWAHATI-781001

2:THE BRANCH MANAGER
INDUSTRIAL CO-OPERATIVE BANK LIMITED
NOONMATI BRANCH GUWAHATI-78102

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER**

Date : 05.02.2024

Heard Mr. P.K. Roy Choudhury, learned counsel for the petitioners, who
prays for a direction to be issued to the respondent No. 1, Assam Industrial Co-

operative Bank Limited to set aside the impugned letter dated 05.10.2023. Further, the prayer of the petitioners is to issue a direction to the respondent No. 1/bank to adjust the fixed deposit amounts lying in the respondent No. 1/bank, amounting to Rs. 26 Lakhs and Rs. 21,62,000/- respectively, against the total payable amount of Rs. 1 Crore, after deducting Rs. 39 Lakhs already paid by the petitioners to the respondent No. 1/bank.

2. The petitioners' case in brief is that the petitioner No. 1 is a registered company under the Companies Act, 1956. The petitioner No. 2 and his mother were appointed as Directors of the said company. Subsequently, the wife of the petitioner No. 2, Smt. Hemaprava Devi, became a Director of the petitioner No. 1 in place of the mother of the petitioner No. 2. During the time the petitioner No. 2 suffered from serious medical problems, his wife Hemaprava Devi used to control the company and committed several illegalities, while running the affairs of the company. Further, the petitioner No. 2 was removed from the Board of Directors of the company. The removal of the petitioner No. 2 from the Board of Directors was put to challenge by the petitioner No. 2 before the learned National Law Tribunal, Guwahati Bench, (in short, the Tribunal) vide TP No. 21/2016. TP 21/2016 was ultimately disposed of on the basis of a compromise arrived at between the parties, as recorded in the order dated 13.10.2017 passed by the learned National Law Tribunal, Guwahati Bench, as follows:-

“The petitioner No.2 Sri Rupak Mohanta will take over the management of Vivik Cylinders Pvt. Ltd. w.e.f. 13.10.2017. Sri Rupak Mohanta on behalf of Vivik Cylinders Pvt. Ltd. will take over the loan liability of Industrial Co-operative Bank Limited, Noonmati Branch against Account Number: 1951 OD-to the tune of Rs.1 Crore in the name of Vivik Cylinders Pvt. Ltd. The land of Vivik Mohanta will be released within 31st October, 2018. The

personal guarantee and liability of Hemaprava devi and Vivik Mohanta towards the loan of Industrial Cooperative Bank, Noonmati Branch shall legally cease from the date of settlement and correspondence to this shall be immediately done by Rupak Mohanta and the new management."

3. It may also be stated herein that prior to above order dated 13.10.2017, the terms of the compromise had been reflected in paragraph 2 of the order dated 11.10.2017, passed by the learned Tribunal, which is as follows:

"2. The parties hereto submit that the matter in dispute in this proceeding has been settled amicably on certain terms and conditions arrived at by the parties. Such terms and conditions are said to be as under:

- (i) *The petitioner, Mr R. Mahanta, would pay Rs.1 crore to the Industrial Cooperative Bank in order to liquidate the overdraft loan amount to the tune of Rs.1 crore in the name of Vivik Cylinder Pvt. Ltd.*
- (ii) *Respondent No.2, Ms H. Devi, will withdraw the fixed deposit amounts of Rs.39,60,600/-, Rs.18,65,457/- and Rs.100,000/-.*
- (iii) *Further, respondent No.2 will pay Rs.20,00,000/- towards the liquidity of the statutory liabilities of the company which is stated to be more or less Rs.60,00,000/- as on today. Said amount of Rs.20,00,000/- would, however, be paid by the respondent No.2 once she withdraws the amount of Rs.18,65,457/- from the Industrial Cooperative Bank."*

4. The petitioner's counsel submits that subsequent to the above facts, the petitioner No. 2 submitted an application dated 05.03.2018 to the respondent

No. 1/bank, regarding repayment of the overdraft account, wherein the petitioner No. 2 stated that the land over which the company was situated was valued at more than Rs. 3,00,00,00/- and therefore, liquidation of the above loan amount of Rs. 1,00,00,000/- in overdraft OD No. 1952 could be done. The petitioner No. 2 also made a request to the bank to increase the loan account.

5. The petitioners' counsel submits that though the respondent No. 1 did not consider the representation made by the petitioner No. 2, the petitioner No. 2 started paying the amount decreed by the learned Tribunal with the respondent bank. However, due to an accident suffered by the petitioner No. 2, the petitioner No. 2 became irregular in making the re-payment to the bank. Accordingly, on 28.09.2023, he submitted an application before the respondent No. 1/bank stating that he had already deposited an amount of Rs.39,20,000/ to the bank and that there were two fixed deposit amounts lying with the Respondent Bank, to the tune of Rs.26,00000.00 and Rs.21,62,000.00=Rs.47,62,000.00. The petitioner No. 2 therefore prayed to the bank authorities, to adjust the said amount, against the total payable amount of Rs.1 Crore, after deducting the amount paid.

6. The petitioners' counsel submits that in response to the petitioners' application dated 28.09.2023, the respondent No. 1 bank has written a letter dated 05.10.2023 to the petitioner No. 2, stating that without proper information relating to the captioned fixed deposit i.e., the name of the depositor, date of issue and respective fixed deposit account number, it was not possible for the Bank to find out the fixed deposit. Further, as regard the statement of the petitioner No. 2, regarding payment of Rs.39,20,000.00, out of the total amount payable, the respondent bank stated that the loan account of the petitioner was classified as NPA on 31.03.2019 and the interest was charged

up to 31.03.2019 only. Thus, they were yet to charge interest from 01.04.2019 till final closure of the loan.

7. The prayer of the petitioners is that the respondent No. 1/bank should be directed to adjust the petitioners' fixed deposited amounts lying with the Bank against the Rs. 1 Crore payable by the petitioners, after deducting the amount already paid by the petitioners.

8. On perusing the contents of the writ petition and after hearing the learned counsels for the parties, this Court is of the view that the contents of the impugned letter dated 05.10.2023 issued by the respondent No. 1/bank should be reproduced, which is as follows:-

"Sub: Adjustment of fixed deposit of Rs.26,00,000.00 and Rs.21,62,000.00 in loan account No.00/183/1952.

Reference: Your letter No. nil dated 28.09.2023.

With reference to the captioned subject, please refer to our earlier letter dated 11.09.2023 where we have mentioned that without proper information's relating to the captioned fixed deposit i.e, name of the depositor, date of issue and respective fixed deposit account numbers, it is not possible for us to find out the fixed deposits.

2. Further, you have mentioned that your loan amount after payment of certain amount stood at Rs. 83,02,825.32 and after that you have paid Rs.39,20,000.00. In this regard we would like to inform you your loan account was classified as NPA on 31.03.2019 and interest was charged up to 31.03.2019 only, we are yet charge interest from 01.04.2019 to the date of final closure of the loan.

9. As can be seen from the above letter dated 05.10.2023, the petitioners' have to inform the bank about the required information asked for by the bank. Further, it is also seen that the petitioners have not made any reply to the queries made by the respondent No. 1/bank in the said letter dated 05.10.2023.

In the absence of the petitioners giving any information to the queries raised by the respondent No. 1/bank or giving reasons as to why such information cannot be or could not be given, this Court is not inclined to exercise it's discretion in the present case at this stage. The petitioners will have to give a reply to the respondent No. 1/bank, with regard to the name of the depositor in whose name the fixed accounts have been made etc., as required in the letter dated 05.10.2023.

10. In view of the above reasons, this Court is of the view that unless the petitioners give a proper reply to the respondent No. 1/bank, by answering the queries raised by them, there is nothing to adjudicate at this stage, as there is nothing to show that any enforceable right of the petitioners have been violated

11. Accordingly, this writ petition is dismissed, with liberty being given to the petitioners to give a reply to the letter dated 05.10.2023 issued by the respondent No. 1. In the event, the petitioners submit their reply, which should be done within 3 (three) weeks from today, the respondent Bank should make a further reply to the same, within a further period of 3 (three) weeks thereafter.

JUDGE

Comparing Assistant