
(2023) 03 GAU CK 0060
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 263 Of 2023

Shree Sai Rolling Mills (India) Ltd	Vs	APPELLANT
North Eastern Development Finance Corporation Ltd.		RESPONDENT

Date of Decision : 30-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 141, 142, 142(1), 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 17

Citation : (2023) 03 GAU CK 0060

Hon'ble Judges : Sandeep Mehta, CJ;Mitali Thakuria , J

Bench : Division Bench

Advocate : Parag Das, U.K. Nair, H. Das, S. Dutta, K.L. Gupta

Final Decision : Dismissed

Judgement

Sandeep Mehta, CJ

By way of this petition filed under Article 226 of the Constitution of India, the petitioners seek to invoke the writ jurisdiction of this Court craving the following reliefs:

"In the premises, it is therefore, prayed that your Lordship would graciously be pleased to call for the records, issue Rule calling upon the Respondents, more particularly the Respondent No.2 and 3 to show cause as to why a writ in the nature of certiorari shall not be issued for quashing and setting aside impugned E-auction proceeding held on 13.12.2022 and the sale certificate if any thereof issued in favour of the Respondent No.4 in respect of the immovable property shown at Schedule below

-AND/OR-

Why such further writ in the nature of certiorari shall not be issued quashing and setting aside the Revocation of Compromise settlement letter under reference No NEDFI/PFD-SAMC/2022-23/ No 645 dated 27.05.2022 of M/s Shree Sai Prakash

Alloys (P) limited (Petitioner No.2)

-AND/OR-

Why a writ in the nature of mandamus shall not be issued commanding, directing the Respondent No 1, 2 and 3 to restore the operation of the compromise Settlement sanction letter of the term loan account of the Petitioner No.1 and 2 under reference No NEDFI/PFD-SAMC/2020-21/No. 4677 dated 31.03.2021, give extension thereof on any condition and to accept the left over and/or remaining balance amounts of the said Compromise settlement sanction letter dated 31.03.2021 along with such interest per annum as contracted in terms of the Term Loan Agreement arrived at Between the parties

-AND/OR-

In the event of repayment of Rs.4,30,000,00/- and Rs.1,20,000,00/- out of the total compromise amount being about 86% of the compromise settlement, why such direction shall not be made for handing over possession of the mortgaged property shown at Schedule below to the Petitioners."

2. Brief facts relevant and essential for disposal of the writ petition are noted hereinbelow.

3. The present writ petition has been filed by two petitioner Companies through their authorized Director- Mr. Sandeep Kumar Bhagat seeking the above said reliefs.

The petitioner Companies took term loans of Rs.7 crores and Rs.5 crores respectively from the respondent Nos.1 and 2 for generating working capital. The term loans were sanctioned on 23.09.2011 (Rs.7 crores) and 15.03.2014 (Rs.5 crores).

It may be stated that for securing the loans, equitable mortgage was created by pledging the personal properties of the Directors Sandeep Kumar Bhagat and Smt. Shalini Bhagat. The Companies ran into financial crisis sometime around the year 2016 and thus, the repayments became irregular. The accounts were declared NPA. The respondent Nos.1 and 2 initiated proceedings for securing the loan amount. A One Time Settlement (OTS in short) was arrived at between the parties on 30.07.2019. However, as the petitioners failed to pay the amount under the One Time Settlement (OTS), a revised settlement was proposed vide communication dated 31.03.2021. The loan account of the petitioner No.1 was fully liquidated. Thus, for all practical purposes, the writ petition filed on behalf the petitioner No.1 is misconceived. However, the petitioner No.2 failed to repay the due amount of loan nor did it act as per the restructuring provided under the revised/extended OTS upon which, the respondents initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI in short).

4. E-auction Sale Notice was published on 10.11.2022 for auctioning the

mortgaged assets being the personal properties of the Directors of the petitioner No.2. The bid of respondent No.4 has been accepted whereupon the petitioners have approached this Court assailing the auction proceedings and seeking the above mentioned relief.

5. Learned counsel Mr. Parag Das representing the petitioners has filed detailed written arguments wherein the principal thrust of challenge to the impugned action projected is that the proceedings under the SARFAESI Act are not maintainable on the grounds, namely, (1) that less than 20% of the principal amount and interest remains due to be paid and (2) proceedings for corporate resolution have been initiated by the respondents in the NCLT and hence, the proceedings under the SARFAESI Act are barred by law and the mortgaged properties cannot be sold without permission of the NCLT.

6. The respondent Nos.1, 2 and 3 have filed a detailed affidavit-in-opposition stating therein that the loan account of the petitioner No.1 was closed much before the writ petition came to be filed.

So far the petitioner No.2 is concerned, a sum of Rs.7 crores was sanctioned to it as Term Loan. Under the One Time Settlement, the petitioner No.2 was given the opportunity to settle the account for a sum of Rs.4,57,62,867/- which would include the principal amount as well as legal cost. Interest accrued to the tune of Rs.2,17,50,000/- odd was waived. However, the petitioner failed to act in terms of the One Time Settlement which was further extended till 31.12.2021.

7. It has been pertinently mentioned in the affidavit-in-opposition that the assets mortgaged with the Bank to secure the loan are personal properties of the Directors and thus, the insolvency proceedings pending before the NCLT, would not come in the way of the Bank to proceed with the sale and secure its dues because only the property owned by the corporate debtor is saved by virtue of the IBC.

At para No.9 of the affidavit, it has been stated that the petitioner No.2 had earlier approached this Court by filing writ petition, WP(C) No.130/2021 challenging the very same SARFAESI proceedings and thereafter, also preferred applications before the learned Debts Recovery Tribunal (DRT) which had since been disposed of.

8. After this statement made in the affidavit filed by the respondent Nos.1, 2 and 3, the petitioners filed an affidavit dated 16.02.2023 wherein, the factum of filing of the aforesaid writ petition, WP(C) No.130/2021 has been admitted with a lame explanation that the earlier action of litigations that were disposed did not involve similar cause of action as to the violation of Article 8 and 9 of Security Interest (Enforcement) Act which is the pertinent ground of challenge in this writ petition.

Nonetheless, the petitioners have not denied the fact that the earlier writ petition was also filed in relation to the very same loan account/s.

9. We have called for the records of the writ petition, WP(C) No.130/2021 filed by Mr. Sandeep Kumar Bhagat in the capacity of Suspended Director of both the petitioner Companies.

The prayer clause in the writ petition WP(C) No.130/2021 reads as below :-

"In the premises aforesaid, it is most humble prayed that your Lordships may be pleased to admit the petition, call for the records, issue notice upon the Respondent to show cause as to why the impugned letter dated 24.02.2020 (Annexure No.11) for revocation of OTS dated 30.07.2019 shall not be set aside and quashed and pending hearing and disposal of the writ petition, no consequential effects of revocation shall be initiated by the respondent authorities and further be pleased to restrain the respondent Corporation from initiating any no coercive measures/action by reviving the OTS sanction dated 30.07.2019 and/or pass such further Order/Orders as your Lordships may deem fit and proper."

10. The writ petition aforesaid was disposed of by the Division Bench of this Court by order dated 01.02.2021. The operative portion thereof has material bearing on this litigation and hence the same is reproduced hereinbelow for the sake of ready reference:-

".....

The petitioner has approached this Court against the vacation notice which has been passed by the Secured Creditor of the respondent Bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

The admitted position is that the petitioner had taken a loan from the respondent Bank which he subsequently could not repay in time, and therefore, his account has been declared as NPA.

Proceeding has been initiated by the respondent Bank under the provisions of SARFAESI Act, and under these circumstances, this writ petition has been filed challenging the order passed by the Secured Creditor of the respondent Bank under the Act.

All the same, the petitioner has a statutory remedy to file an appeal before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. We are, however, also conscious of the fact that the appeal of the present petitioner may be delayed, being outside the statutory period of limitation.

Considering the strange and difficult circumstances of the present COVID-19 pandemic situation and, being aware of the fact that Debts Recovery Tribunal is not given specific powers to condone the delay, we request the Debts Recovery Tribunal to consider that aspect of the matter while entertaining the application of the petitioners.

We must also refer at this stage the directions given by the Hon'ble Apex Court

in 2020 SCC OnLine SC 343 whereby the period of limitation has been directed to be extended on account of to COVID-19 pandemic situation, which reads as under:

“ORDER

This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrar General of the High Courts, returnable in four weeks.”

The delay condonation application of the petitioner, should be considered should it be filed, before the Debts Recovery Tribunal, keeping in mind the above directions of the Hon’ble Apex Court.

Mr. S. Dutta, learned Standing Counsel for the respondent Bank has very fairly sated that for two weeks from today, they will not be taking any coercive measure against the petitioner, to enable the petitioner to approach the Debts Recovery Tribunal.

The writ petition stands disposed of in the above terms.”

Whilst disposing of the writ petition, the Court granted indulgence to the petitioner to approach the DRT by considering the prayer of the petitioner to condone the delay in filing of the application in light of the Hon’ble Supreme Court judgment in the case of Cognizance for Extension of Limitation, In re, reported in 2020 SCC OnLine SC 343.

The Bank’s counsel, gave an undertaking that coercive measures would be deferred by 2(two) weeks so as to enable the petitioner to approach the DRT.

11. It has been mentioned in the para No.14 of written submissions of the

petitioners that the disputes between the borrower and the Bank should not be entertained by the Hon'ble High Courts under writ jurisdiction without availing alternative statutory forum of DRT as held by Hon'ble Supreme Court in the cases of Authorized Officer, State Bank of India, Travancore & Anr. Vs. Mathew K.C., reported in (2018) 3 SCC 85 and ICIC Bank Limited & Ors. Vs. Umakanta Mahapatra and Ors., reported in (2019) 13 SCC 497. However, the petitioners have tried to distinguish the said judgment by projecting purely disputed questions of facts.

12. As has been stated by the respondents in para No.17 of their affidavit-in-opposition, not only the petitioner Sandeep Kumar Bhagat filed writ petition in relation to the very same recovery proceedings but thereafter, some applications were filed before the DRT as well. However, while filing the present writ petition, the petitioners have intentionally, chosen to not to make a disclosure regarding details of the applications filed before the DRT in addition to the blatant concealment regarding filing of the WP(C) No.130/2021 and the order passed by the Division Bench therein.

13. The Hon'ble Supreme Court has time and again, held that litigants who approach the Courts by indulging concealment of material facts should be repelled and dealt with strong hands.

14. Considering the fact that the petitioners have made blatant concealment of facts by not disclosing the factum of earlier writ petition filed by the suspended Director Sandeep Kumar Bhagat who has sworn the affidavit in support of this writ petition and the fate of the applications filed before the DRT in relation to the same loan Account, we are of the view that the petitioners do not deserve indulgence of this Court in exercise of the extra-writ jurisdiction. Rather, we are of the firm opinion that the petitioners have blatantly misused the process of law by repeatedly, avoiding to settle the matter in the One Time Settlement proposed by the Bank which was also revised previously too, the petitioners, made an attempt to stall the SARFAESI proceedings by filing writ petition, WP(C) No.130/2021 which stands disposed of as narrated in the para No. 9 of the affidavit-in-opposition filed by the respondent Nos.1, 2 and 3. The petitioners also filed some applications in the DRT pertaining to the same loan account but they have conveniently made no reference to the facts of such applications in the writ petition.

15. In A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, reported in [2012] 0 AIR(SC) 2010, the Hon'ble Supreme Court summarized the earlier judgments on the issue of dealing with frivolous litigations with heavy hands and to deal with such unscrupulous litigants by imposing cost.

The relevant observations made by the Hon'ble Supreme Court in para Nos.35 to 43 of A. Shanmugam (supra) are reproduced hereinbelow for the sake of ready reference.

"35. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled-for litigations. Experience also reveals that our courts have been very reluctant to grant the actual or realistic costs. We would like to explain this by giving this illustration. When a litigant is compelled to spend Rs. 1 lac on a frivolous litigation there is hardly any justification in awarding Rs. 1000/- as costs unless there are special circumstances of that case. We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.

36. This Court in another important case in *Indian Council for Enviro-Legal Action v. Union of India* (2011) 8 SCC 161 (of which one of us, Dr. Bhandari, J. was the author of the judgment) had an occasion to deal with the concept of restitution. The relevant paragraphs of that judgment dealing with relevant judgments are reproduced hereunder: :-

193. This Court in *Grindlays Bank Ltd. v. Income Tax Officer, Calcutta*, (1980) 2 SCC 191 observed as under:

'... When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it.....'

194. In *Ram Krishna Verma and Others v. State of U.P. and Others* (1992) 2 SCC 620] this Court observed as under:

"The 50 operators including the appellants/private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jeewan Nath Wahal's case* [*Jeewan Nath Wahal v. State of U.P.*, (2011) 12 SCC 769] and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sep. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in *Grindlays Bank Ltd. vs. Income-tax Officer* [1990] 2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on

the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb.26, 1959.....”

195. This Court in *Kavita Trehan v. Balsara Hygiene Products Ltd.*, (1994) 5 SCC 380 observed as under:

“The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words “Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose” The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.’

196. This Court in *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd.* (1999) 2 SCC 325 observed as under:

“From the narration of the facts, though it appears to us, *prima facie*, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the [Receiver with a direction to deposit the royalty amount fixed by the] Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation.’

197. In *Padmawati v. Harijan Sewak Sangh* – CM (Main) No.449 of 2002 decided by the Delhi High Court on 6.11.2008, the Court held as under:-

“The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where the court finds that using the courts as a tool, a litigant has perpetuated illegalities or has

perpetuated an illegal possession, the court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the courts. One of the aims of every judicial system has to be to discourage unjust enrichment using courts as a tool. The costs imposed by the courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

198. We approve the findings of the High Court of Delhi in the aforementioned case.

199. The Court also stated “Before parting with this case, we consider it necessary to observe that one of the [main] reasons for overflowing of court dockets is the frivolous litigation in which the courts are engaged by the litigants and which is dragged on for as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right but also must be burdened with exemplary costs. The faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make the wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years’ long litigation. Despite the settled legal positions, the obvious wrongdoers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the courts”.

200. Against this judgment of the Delhi High Court, Special Leave to Appeal (Civil) No. 29197/2008 was preferred to this Court. The Court passed the following order :

“We have heard the learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment [(2008) 154 DLT 411] passed by the High Court. The special leave petition is, accordingly, dismissed.”

208. In *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd.* [(1999) 2 SCC 325] this Court in para 4 of the judgment observed as under: (SCC pp. 326-27)

“... It is true that proceedings are dragged on for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a

person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation....”

209. In *Ouseph Mathai v. M. Abdul Khadir* [(2002) 1 SCC 319] this Court reiterated the legal position that the stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.’

210. This Court in *South Eastern Coalfields Ltd. v. State of M.P.* [(2003) 8 SCC 648] on examining the principle of restitution in para 26 of the judgment observed as under: “ In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue* [1984 Supp SCC 505]). In law, the term “restitution” is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another.’

211. The Court in para 28 of the aforesaid judgment very carefully mentioned that the litigation should not turn into a fruitful industry and observed as under: (*South Eastern Coalfields Ltd. case* [(2003) 8 SCC 648]

‘..... Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a

relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.'

212. The Court in the aforesaid judgment also observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

213. In a relatively recent judgment of this Court in *Amarjeet Singh v. Devi Ratan* [(2010) 1 SCC 417] the Court in para 17 of the judgment observed as under:

'No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court.'

215. In consonance with the concept of restitution, it was observed that courts should be careful and pass an order neutralising the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

216. In consonance with the principles of equity, justice and good conscience Judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage

fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218. This Court in a very recent case *Ramrameshwari Devi and Others v. Nirmala Devi and Others* 2011(6) Scale 677 had an occasion to deal with similar questions of law regarding imposition of realistic costs and restitution. One of us (Dr Bhandari, J.) was the author of the judgment. It was observed in that case as under:-

"While imposing costs we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter-affidavit, miscellaneous charges towards typing, photocopying, court fee, etc.

The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The appellants have also wasted judicial time of the various courts for the last 40 years."

37. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

38. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

39. Now, when we revert to the facts of this case it becomes quite evident that

the appellant is guilty of suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case.

IRRELEVANT DOCUMENTS:

40. All documents filed by the appellant along with the plaint have no relevance to the controversy involved in the case. We have reproduced a list of the documents to demonstrate that these documents have been filed to mislead the Court. The First Appellate Court has, in fact, got into the trap and was misled by the documents and reached to an entirely erroneous finding that resulted in undue delay of disposal of a small case for almost 17 years.

FALSE AND IRRELEVANT PLEAS:

41. The appellant is also guilty of introducing untenable pleas. The plea of adverse possession which has no foundation or basis in the facts and circumstances of the case was introduced to gain undue benefit. The Court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs.

42. On the facts of the present case, following principles emerge:

1. It is the bounden duty of the Court to uphold the truth and do justice.
2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.
3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.
4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.
5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.
6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a

watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

7. The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

8. The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour.

43. In the instant case, we would have ordinarily imposed heavy costs and would have ordered restitution but looking to the fact that the appellant is a Watchman and may not be able to bear the financial burden, we dismiss these appeals with very nominal costs of Rs. 25,000/- to be paid within a period of two months and direct the appellant to vacate the premises within two months from today and handover peaceful possession of the suit property to the respondent Society. In case, the appellant does not vacate the premises within two months from today, the respondent-Society would be a liberty to take police help and get the premises vacated."

16. In this background, we have no hesitation in holding that the present writ petition suffers from the vice of suppression of material facts and hence, the same is liable to be dismissed and is hereby dismissed with cost of Rs.5,00,000/- (Rupees Five lakhs).

The cost be deposited with the Registry within 30(thirty) days and shall be appropriated in the funds of the Assam State Legal Services Authority.