

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/B) NO. 203 OF 2023

11TH AUGUST, 2023

BETWEEN:

M/s Sharma Videos Pvt. Ltd. Petitioner.

And

State of Uttarakhand & others Respondents.

Counsel for the Petitioner : Mr. A.S. Rawat, learned Senior Counsel assisted by Mr. Jitendra Chaudhary, learned counsel.

Counsel for the State : Mr. Amarendra Pratap Singh, learned Additional Advocate General, Mr. K.N. Joshi, learned Deputy Advocate General and Ms. Puja Banga, learned Brief Holder.

Counsel for the Respondent Nos.2 to 4 : Mr. Siddharth Jain, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The petitioners have preferred the present writ petition to seek the following reliefs:-

"(i) Issue a writ, order or direction in the nature of Certiorari, calling for the record and pleased to quash the impugned E-Auction Notice dated 06/07/2023 (Annexure- 1) issued by the respondent no.4 i.e. Regional Stressed Asset Recovery Branch, BOB, Rudrapur, District- Udham Singh Nagar through its authorized office alongwith the permission order dated 28/07/2023 (Annexure- 20) passed by the respondent no.5 i.e. District Magistrate Udham Singh Nagar.

(ii) Issue a writ, order or direction in the nature of Mandamus and pleased to direct the Respondent Bank to the effect that it shall not proceed further as per its e-auction notice and drop said proceedings and further be pleased to grant 08 months time for repayment of the outstanding dues by permitting the petitioners to sell the secured assets to the third parties.

(iii) Issue a writ, order or direction in the nature of Mandamus and pleased to direct the parties to the effect that they shall maintain status quo on the spot in relation to the properties mentioned in the impugned e-auction notice and not to create a third party interest.

(iv) Issue any other writ, order or direction which this Hon'ble High Court may deem fit and proper in the circumstances of the case".

2. The case of the petitioners is that, after the passing of the order dated 21.06.2023 by this Court in Writ Petition (M/B) No.131 of 2023, the respondent- Bank has proceeded with the auction of the mortgaged property. According to the petitioner, the respondent- Bank is not complying with the procedure prescribed in law, in relation to the evaluation and holding of auction of the mortgaged asset, to the grave prejudice to the petitioners.

3. In our view, it is open to the petitioners to raise the said grievance before the Debts Recovery Tribunal. In these proceedings, we are not called to examine the said issue, particularly, in the first instance.

4. Mr. Rawat submits that due to the pendency of the aforesaid writ petition, i.e. Writ Petition (M/B) No.131 of 2023, before this Court, the DRT is not likely to entertain any application by the petitioners.

5. A perusal of our order dated 21.06.2023 in Writ Petition (M/B) No.131 of 2023, shows that we have not restrained the Tribunal from proceeding with the matter

pending before it. We have only stayed the operation of the order dated 13.10.2022, and subsequent orders passed by the Presiding Officer, DRT, Dehradun in S.A. No.09 of 2022, whereby the stay was granted against the respondent- Bank from proceedings with the auction it was taking under the SARFAESI Act.

6. We, therefore, do not find any merit in this submission of the petitioners.

7. In case the petitioners approach the Tribunal, the Tribunal shall deal with the petitioners' application wherein the petitioners raise grievance with regard to the procedure adopted for auction of the mortgaged asset, on its own merits.

8. We make it clear that we have not examined the petitioners' said grievance, and this order shall not be read as an expression of our view on the said issue.

9. The writ petition is disposed of in the aforesaid terms.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 11th August, 2023

NISHANT