

Court No. - 3

Case :- WRIT - C No. - 36304 of 2023

Petitioner :- Vinay Kumar Srivastava And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Akhilesh Kumar Shukla,Alok Kumar Srivastava

Counsel for Respondent :- C.S.C.,Abhinav Gaur,Amit Shukla

Hon'ble Siddhartha Varma,J.

Hon'ble Manoj Bajaj,J.

- 1.Instructions filed today be kept on record.
2. Heard learned counsel for the petitioner, Sri Amit Shukla learned counsel for the respondent and the learned Standing Counsel.
3. This writ petition has been filed challenging the order passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the 'SARFAESI Act') on 25.3.2023.
4. Learned counsel for the petitioners has primarily assailed the order on the ground that no notice was issued to the petitioner-borrower before the proceedings were initiated.
5. Learned counsel for the Bank and the learned Standing Counsel have relied upon the decision passed by this Court in the case of **Shipra Hotels Limited and another vs. State of U.P. and others** reported in **2022 (12) ADJ 473 (DB)** and have specifically relied upon paragraph no. 52 which states that no notice was required to be given to the borrower at the stage of the decision or at the stage of passing of the order. Since the learned counsel for the Bank and the learned Standing Counsel have specifically relied upon paragraph no. 52, the same is being reproduced here as under:-

"52. In view of the above discussion, it is held that the CMM/DM acting under Section 14 of the SARFAESI Act, 2002 is not required to give notice to the borrower at the stage of the decision or passing order as no hearing can be demanded by the borrower at this stage. However, it is clarified that the order passed by such Magistrate has to be duly served upon the borrower before taking any steps for his forcible dispossession

by such steps or use of force, as may be necessary in the opinion of the Magistrate, and the date fixed for such forcible action shall be duly intimated to such borrower in advance giving him sufficient time to remove his belongings, or to make alternative arrangement."

6. Learned counsel for the Bank has also submitted that the petitioner has already approached the Debt Recovery Tribunal and in the Securitization Application No. 858 of 2022 the next date for hearing is 29.11.2023 and, therefore, before the Debt Recovery Tribunal itself the petitioner may challenge the orders which have been impugned here in the instant writ petition.

7. No interference is warranted.

8. The writ petition is accordingly dismissed.

Order Date :- 27.10.2023

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(Manoj Bajaj,J.) (Siddhartha Varma,J.)