

Court No. - 1

Case :- WRIT - C No. - 10412 of 2023

Petitioner :- M/S Sanjay Ply And Hardware Thru. Proprietor Sanjay Sharma

Respondent :- Debt. Recovery Tribunal Lko. And Others

Counsel for Petitioner :- Suraj Saran,Piyush Pathak

Counsel for Respondent :- C.S.C.,Kapish Srivastava

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(1) Heard Shri Piyush Pathak, learned counsel for the petitioner, learned Standing Counsel representing the State-respondents and Shri Amit Sharma, learned counsel representing the Bank.

(2) At the very outset, learned Counsel appearing for the Bank has submitted that the petitioner's firm took loan to the tune of Rs.2,00,000/- in the year 2003 and when the petitioner failed to repay the said amount, the Bank had served a notice upon the petitioner under Section 13 (4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [here-in-after referred to as '**SARFAESI Act**' for the sake of brevity]. Being aggrieved, the petitioner filed Writ Petition No. 1719(MB) of 2007 which was dismissed vide order dated 23.03.2007 on the ground of alternative remedy before the Debts Recovery Tribunal, Lucknow. Thereafter, the petitioner filed S.A. No. 32 of 2007 before the Tribunal for redemption of property which too was dismissed vide order dated 27.05.2014. Against the order dated 27.05.2014 passed by the Tribunal, the petitioner filed an application for recall of the order which was dismissed in default on 04.09.2018. Thereafter, the petitioner filed an application in the yer 2021 for recall of the order dated

04.09.2018. In the meantime, the Bank has filed an application under Section 14 of SARFAESI Act which was allowed vide order dated 05.04.2023. The petitioner has assailed the order dated 05.04.2023 passed under Section 14 of SARFAESI Act before the Debts Recovery Tribunal in S.A. No. 417 of 2023 which is pending.

(3) Learned Counsel for the Bank has further submitted that the petitioner has availed all remedies available to it, however, when the impugned order has been passed by the opposite party No.5 on 04.11,2023 directing the petitioner to handover the physical possession to the opposite party No.3, the instant writ petition has been filed for quashing the impugned order dated 04.11.2023.

(4) At this stage, learned Counsel for the petitioner has submitted that the petitioner will suffer irreparable loss and injury if the impugned order passed by the opposite party No.5 is not quashed.

(5) On considerations of the submissions made by learned counsel for both parties, it comes out that the petitioner had taken loan for a sum of Rs.2,00,000/- in the year 2003 and so far two decades have passed, even though the loan has not been repaid. During this period, the petitioner-firm has availed all remedies available to it. In the sequence, the S.A. No. 417 of 2023 filed by the petitioner is pending before the Tribunal since 08.06.2003. Now the instant writ petition has been filed for quashing the order dated 04.11.2023, when the order for handing over the physical possession of the house of the petitioner situated at Balia Khera, Gosaiganj, Lucknow is directed to be handed over to the opposite party No.3.

(6) In view of what has been stated above, the writ petition filed by the petitioner lacks merit and is accordingly **dismissed**

leaving it open to the petitioner to approach the Tribunal for deciding S.A. No. 417 of 2023, at the earliest, in accordance with law.

.

[Om Prakash Shukla, J.] [Attau Rahman Masoodi, J.]

Order Date :- 29.11.2023

akhilesh/