

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

⁴³
sm 17.07.
2019

W.P.A.89 of 2019

**Md. Hakimuddin Parwana
Versus
Syndicate Bank & Ors.**

Mr. Deborshi Dhar.

.....for the petitioner

Mr. Pritam Roy.

.....for the respondent no.1 & 2

This is a second round of litigation between the parties arising out of a petition under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). By an earlier order dated 19th March, 2013 the Hon'ble High Court had disposed of an appeal from an order passed by the Debts Recovery Appellate Tribunal (DRAT) dated 10th January, 2019 pending between the parties. It is pertinent to mention that the order dated 10th January, 2019 passed by the DRAT arose out of a proceeding initiated under Section 14 of the SARFAESI. By the said order the Hon'ble High Court had inter alia, allowed the writ petition and directed as follows :-

“This order will, however, not prevent the secured creditor from approaching the District Magistrate, in accordance with law or the District Magistrate in hearing and disposing of the application under Section 14 of the Act of 2002 in accordance with law or the Bank from

making a fresh application to the DM under Section 14 of the Act of 2002. No order as to costs.”

The order passed by the Hon’ble High Court was on 19.03.2019. It is also true that liberty was granted to the secured creditor to have the application pending under Section 14 disposed of in accordance with law. However, it strangely appears that prior to passing of the order of the Hon’ble High Court, it is now contended that on 28th December, 2018 the District Magistrate had already disposed of the application under Section 14 and directed the Executive Magistrate to take possession of the assets and documents of the petitioner/defaulters.

It is contended on behalf of the petitioner that the order dated 28th December, 2018 passed by the District Magistrate, Jalpaiguri (“the impugned order”) is back dated and could not have been passed on 28th December, 2018. The petitioner further submits that the District Magistrate has proceeded with a closed mind and has mechanically signed on the impugned order which has been back dated. No notice of the hearing on 28th December, 2019 was served on the petitioner.

Counsel on behalf of the respondent bank submits that the District Magistrate, Jalpaiguri was not prevented from passing the impugned order on the pending application under Section 14. He

submits that there was liberty granted by the order of the Hon'ble High Court dated 19th March, 2019 and there was no need to file a fresh application under Section 14.

I have heard the rival arguments on the parties and I am of the opinion that the District Magistrate could not have passed the final order on 28th December, 2018. This fact of the application under Section 14 being disposed off on 28th December, 2018 was never brought to the notice of the Hon'ble High Court. On the contrary, by specifically granting liberty to the respondent bank to have its application under Section 14 disposed of in accordance with law, the High Court proceeded on the basis as if the application under Section 14 of the SARFAESI was still pending.

It is submitted on behalf of the petitioner that no notice, prior to passing of the impugned order was ever served on the petitioner. It is strange that where the parties are fighting tooth and nail before different fora, the impugned order could have been passed on 28th December, 2018. The District Magistrate has chosen to hear out and dispose of the application under Section 14 during the pendency of proceedings before the High Court and when the earlier proceedings had not attained finality.

In the circumstances, the impugned order dated 28th December, 2018 is quashed and set aside. The

matter is remanded back to the District Magistrate to hear the pending application under Section 14 of the SARFAESI filed by the respondent bank expeditiously and in accordance with law.

With the aforesaid directions WPA 89 of 2019 is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the petitioner upon compliance of usual formalities.

(Ravi Krishan Kapur, J.)