

16.12.2020
Court No. 19
Item No.6
CP

C.O. 737 of 2020

Sri Binoy Krishna Roy
vs.
Sri Raju Sharma

(via video conference)

Mr. Sudip Ghosh Chowdhury
Mr. Argha Das
Mr. Abhishek Bose

....for the petitioners.

The defendant in Title Suit No. 295 of 2016, pending before the learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly, has filed this revisional application challenging the order dated December 13, 2019, passed by the learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly.

It is the contention of the defendant that the suit for eviction of licensee could not be maintainable as the ICICI Bank had taken symbolic possession of the property in exercise of power under the SARFAESI Act. By an application under Section 151 of the Code of Civil Procedure the petitioner prayed for dismissal of the suit on the ground of non-maintainability. According to the petitioner the suit could not have been filed and could not progress in view of the fact that symbolic possession of the property was also taken over by the ICICI Bank and

the questions involved in the suit was within the periphery of the SARFAESI Act and the jurisdiction of the civil court was barred. The suit property was mortgaged to the ICCI Bank as contended by the petitioner.

I have gone through the order impugned. It appears that the learned court below has applied its mind to the pleadings and the provisions of law. The learned court below came to the conclusion that in a suit for eviction, the defendant/petitioner was in possession of the suit property and, admittedly, the plaintiff was the owner. The Tribunal in the proceedings under the SARFAESI Act would not determine whether the petitioner was a licensee and could not also grant a decree of eviction, as such, the learned court below refused to pass orders as prayed for. The licensee could not also challenge the title of the land lord. SARFAESI proceeding has not yet been concluded. The facts and law urged by the petitioner are matters to be gone into during trial and should be decided on the basis of evidence.

I do not find any reason to interfere with the order impugned. Undoubtedly, the maintainability of the suit shall be a separate issue to be decided at the time of trial and not on the basis of an application under Section 151 of the Code of Civil Procedure.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)