

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

(Through Video Conference)

WPA 3518 of 2020

IDFC First Bank Limited & Anr.

Vs.

The State of West Bengal & Ors.

Ms. Reshmi Ghosh

Mr. Ranjit Singh

Ms. Tutul Das Singh

Mr. Amar Singh

Ms. Pooja Sett

... For the petitioners

Mr. Srijib Chakraborty

... For the State

The petitioner no.1 is a secured creditor. The petitioners applied under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”) before the learned District Magistrate, South 24-Pargnas for the purpose of taking possession of two flats being the entire first floor and the entire second floor situate at 1/3A, Ballygunge Place (East), Kolkata – 700 019. The learned District Magistrate, South 24-Parganas has passed an order on 16th September, 2019 authorising Shri Sadhan Debnath, WBCS (Exe.) to take possession of the two flats. In compliance of the said order dated 16th September, 2019, the possession of one of the flats, being the entire first floor of premises no. 1/3A, Ballygunge Place (East), Kolkata – 700 019, was taken, but due to resistance,

the possession of the other flat, being the entire second floor, could not be taken.

In view of the resistance, the police authorities registered a case, being Gariahat PS Case No.298 dated 15th November, 2019 under Sections 188/34 of the Indian Penal Code (in short "IPC") before the Jurisdictional Magistrate and filed necessary report to that effect.

The petitioners seek mandatory direction upon the respondents to complete the process of taking the actual physical possession of the mortgaged property of which possession could not be taken on 5th November, 2019.

After considering the provisions of Section 14(1) of the SARFAESI Act and applying to the facts of the instant case, it is clear that the learned District Magistrate, South 24-Parganas, on being approached was obliged to pass suitable orders for the purpose of taking possession within a period of 30 days from the date of the application, failing which a further 30 days period was available to the said learned Magistrate on recording the reasons for the delay in writing to pass such suitable order to take possession. The learned District Magistrate, in the instant case, had passed an order allowing necessary police help as also authorising a person under the provisions of Section 14(1A) of the SARFAESI Act to take possession. The provisions of Sections 14(1) and 14(1A) of the SARFAESI Act have, therefor, been complied with. Section 14(2) empowers the

learned District Magistrate to take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary for complying with an order passed under Section 14(1) of the SARFAESI Act. So the learned District Magistrate has been given the power to see that his order passed under Section 14(1) of the SARFAESI Act is carried out.

In the instant case, the petitioners on being unable to take possession of the flats had again approached the learned District Magistrate but such application/representation has not yet been disposed of. The learned Magistrate in exercise of the authority given under Section 14(2) of the SARFAESI Act on the petitioners' application/representation was required to decide upon the steps required to be taken for complying with the order passed under Section 14(1) of the SARFAESI Act but did not do so. The petitioners are aggrieved by such act.

The matter would have been simple had the police not registered a case under Sections 188/34 of IPC. In that event, the District Magistrate, South 24-Parganas, could have been directed to dispose of the petitioners' application. At this juncture, if I direct the learned District Magistrate to dispose of the petitioners' application in a time bound manner will amount to interfering with a police case already instituted before the Jurisdictional Magistrate arising out of the resistance put forth to take possession. The Jurisdictional Magistrate in the facts and circumstances of

the case, is directed to dispose of the case pending before the said Jurisdictional Magistrate arising out of Gariahat PS Case No.298 dated 15th November, 2019 under Sections 188/34 of the IPC after hearing the parties as expeditiously as possible but not beyond 31st July, 2021. The petitioners, if required, shall after the disposal of the criminal case, approach the District Magistrate, South 24-Parganas.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)