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12.03.2021
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WPA 5316 of 2021

(Via video conference)

Aditya Birla Finance Limited and
another
Vs.
Commissioner of Police, Kolkata and
others

Mr. S.N. Mookherjee,
Mr. Samik Kanti Chakraborty,
Mr. Soumava Mukherjee

... for the petitioners

Mr. Subhabrata Datta,
Mr. Abdus Salam

.... for the State

The present writ petition has been filed challenging the inaction of the police in complying with a specific order of the concerned District Magistrate, South 24 Parganas dated November 22, 2019 passed under Section 14 of the SARFAESI Act, 2002.

Learned counsel appearing for the State-respondent files a report authored by the concerned Officer-in-Charge of the Topsia Police Station, which indicates that

the present occupant of the premises approached the authorities seeking opportunity to produce certain documents pertaining to a further hearing allegedly being given by the Magistrate.

The report filed today be kept on record.

Mr. Samrat Goswami, learned Advocate appears and seeks verbally to intervene in the matter on behalf of the present occupant and submits that there has been a subsequent consideration of the order of the District Magistrate. However, Mr. Goswami further submits that he is not equipped with relevant documents in support of such submissions, since his client is not a party to the present writ petition.

Be that as it may, an order under Section 14 of the 2002 Act is in the nature of execution of an order passed within the purview of Section 13(4) of the 2002 Act. The Magistrate has no judicial discretion to reconsider the veracity of the principal order, which it is the duty of the Magistrate to implement. Irrespective of any pending

further challenge, there is no bar for the police to comply with the Magistrate's order dated November 22, 2019. Needless to say, in the event any further order is passed by any forum, recalling/setting aside the order of the Magistrate, the order dated November 22, 2019 would be subject to that.

However, mere allegation of pendency of a related matter cannot be a deterrent in the District Magistrate enforcing the order and the police implementing the order of the District Magistrate under Section 14 of the SARFAESI Act.

Accordingly, the prayer for intervention made by Mr. Goswami, Advocate, is refused.

WPA 5316 of 2021 is disposed of by directing respondent no.3 to immediately comply with the order of the District Magistrate, South 24 Parganas dated November 22, 2019, annexed at page 122 of the present writ petition. Such assistance will be rendered by the respondent no.3 at the earliest. However, this direction will be subject to any further order passed by a competent forum, if any, setting aside or

modifying the parent order on the basis of which the Magistrate passed the order under Section 14 and/or the order passed by the Magistrate under Section 14 of the SARFAESI Act.

There will be no order as to costs.

Respondents are to act on the communication by learned advocates for the parties and/or the server copy of this order, without insisting upon prior production of a certified copy thereof.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)