

16-08-2021
ct no. 13
Sl. 99
Jks/sayandeep

WPA 11548 Of 2021

Shri Biswajit Dey & Anr.

-Versus-

State Bank of India & Anr.

(Via Video Conference)

Mr. Sankha Subhra Ray

..... For the petitioners

Ms. Deblina Lahiri

.... For the Respondent Bank

Affidavit-of-service filed in Court today be kept with the record.

The writ petitioner aggrieved by the fact that the State Bank of India has refused to register conveyance based on the sale certificate of year 2012. The Bank is ready and willing to register the sale certificate but has reservations in executing conveyance, inter alia, in view of the fact that the sale has occurred in the year 2012, more than 9 years ago.

It is submitted in terms of the Registration Act, 1908 a document is required to be registered within 4 months of its execution. There is some grey area as to whether a sale certificate would constitute an agreement or a document coming within the meaning of the limitation period of the said Act of 1908.

Be that as it may this Court is unable to accept the stand of the Bank. While they are willing to register the sale certificate, they are not willing to execute conveyance in respect of the sale. The reason therefor as submitted by the counsel for the bank is that the particulars of the transaction are not available as on date. It is submitted that the sale was conducted by the erstwhile State Bank of Bikaner and Jaipur which has since merged with the State Bank of India. The said plea is specious. Having taken over the assets of the erstwhile State Bank of Bikaner and Jaipur the SBI is also bound by its liabilities.

In that view of the matter, the State Bank of India is directed to execute a simple conveyance in favour of the writ petitioner within a period of 4 months from date, which shall primarily comprise in the transaction of sale of the said immovable property as contained in the sale certificate. The entire expense of registration as well as stamp duty including any penalty, shall be borne exclusively by the petitioner.

The argument of the Bank that the SARFAESI Act, 2002 overrides the provisions of the Registration Act and hence a sale certificate under the SARFAESI Act, 2002 need not be

registered is also not acceptable. The authorities under the Registration Act and the procedures prescribed thereunder is the only way to confer a right in rem on the writ petitioners. Such right of the petitioner must be available for public scrutiny in public records.

It is only the Registration Act read with the State Stamp Act that provide for creation of public records of property rights of persons. The SARFAESI Act, 2002 does not prescribe any such record for public scrutiny.

Further non-registration of a document transferring property would also deprive the State of its revenue. The SARFAESI Act, 2002 cannot be understood to deprive the State of any lawful revenue.

With the aforesaid observations the writ petition is disposed of

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)