

November 22, 2021
Item No. 33
Court No.1
SG/s.biswas

FMA 838 of 2021
With
CAN 1 of 2021

IDFC Fint Bank Limited and another
vs.
The State of West Bengal and others
(Through Video Conference)

Ms. Reshmi Ghosh,
Mr. Amar Singh,
Ms. Pooja Sett,
Mr. Ranjit Singh, Advocates

... for the appellants

Mr. Anirban Ray, Id. Govt. Pleader
Mr. Amitesh Banerjee, Senior Advocate
Mr. Raja Saha,
Mr. Nilotpal Chatterjee, Advocates

... for the State

This appeal is directed against the order of the learned single Judge dated 18.03.2021 passed in WPA 3518 of 2020 whereby the learned single Judge has directed to decide the Gariahat P.S. case No.298 dated 15th November, 2019 under Section 188/34 of the IPC after hearing the parties before 31st July, 2021 and has observed that if required the petitioner can approach the District Magistrate, South 24 Parganas after disposal of the criminal case.

The submission of learned counsel for the appellants is that the criminal case was registered on account of resistance offered by the person while taking possession of the second floor. Therefore, on account of the pendency of the said criminal case the implementation of the order under Section 14 of the SARFAESI Act cannot be deferred.

Learned counsel for the State does not dispute the said submission and he has also pointed out that in the criminal case registered against the private individuals, the charge-sheet has been filed on 23.07.2020 before the Chief Judicial Magistrate, Alipore.

Having examined the record, it is noticed that the petitioners are the secured creditors and had approached the Writ Court with the grievance that at the instance of the petitioners/appellants, an order under Section 14(1) of the SARFAESI Act was passed by the District Magistrate, South 24 Parganas for taking possession of the two floors i.e. first floor and the entire second floor situated at 1/3A, Ballygunge Place (East), Kolkata. The order of the District Magistrate under Section 14 of the said Act is dated 16th September, 2019 and in pursuance thereto the possession of one flat which is on the first floor was delivered, but in respect of other floor, resistance was offered therefore, the possession could not be delivered. Hence, in the writ petition a direction was sought to take possession of the said portion. It appears that the delivery of possession was resisted by certain individuals. Therefore, the criminal case was registered by Gariahat Police Station Case No. 298 under Section 188/34 of the IPC. The registration of the said criminal case would not effect operation of the order under Section 14 of the SARFAESI Act and therefore, learned single Judge could not have disposed of the petition without issuing any direction in respect of the delivery of

possession in pursuant to order under Section 14 of the Act but directing disposal of the criminal case and thereafter giving opportunity to the petitioners to approach the District Magistrate. The implementation of the order under Section 14 could not be made subject to the result of the criminal case as both the proceedings are different proceedings. Therefore, we are unable to uphold the said part of the order of learned single Judge.

In these circumstances, the appeal is allowed with a direction to the State authorities to duly and fully implement the order passed by the District Magistrate under Section 14 of the SARFAESI Act, if there is no other legal impediment in this regard.

Let the needful be done expeditiously.

The appeal and connected application are accordingly disposed of.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]