

31.08.2021

Sl. No.12
Court No.8
BM.

WPA 13044 of 2021

M/S. S. GUHASARKAR AND CO. AND ORS.

Vs.

**THE DISTRICT MAGISTRATE, S. 24 PGS AND
ORS.Vs.**

(Via Video Conference)

Mr. Arunava Ghosh
Mr. Anindya Lahiri
Mr. Mainak Ganguly
Ms. Pranati Das

... for the petitioners

Mr. Rohit Das
Mr. Kishwar Rahaman
Mr. Indradip Das

... for the respondent no.6

Ms. Jhuma Chakraborty
Mr. Aritra Ghosh

... for the State

M/s. S. Guhasarkar and Co. and others
(hereinafter referred to as 'writ petitioners') have sought
for issuance of writ in the nature of Certiorari as well as
mandamus for direction upon the respondent authorities
and each of them to recall/revoke/withdraw the order
dated 28th June, 2021 and to restrain the respondents
and/or their men and agents from taking any steps
and/or further steps in pursuance or furtherance of the
order impugned.

The brief facts leading to filing of this writ
application is thus that in 2014, the respondent no.5
sanctioned credit facilities by two letters of sanction dated
26th December, 2014 and 29th December, 2014

respectively. Under the first letter of sanction, the petitioner no.1 was sanctioned credit facilities to the tune of Rs.12,96,250/- whereas under the subsequent sanction letter, a sum of Rs.30,57,019/- was sanctioned. But the respondent no.5, however, did not disburse the entire amount sanctioned and made over to the applicant firm lesser amounts.

Suddenly the petitioners were served with a notice dated 19th August, 2016 alleged to have been issued under Section 13(2) of the said Act of 2002 and claiming an exorbitant amount of Rs.44,22,711/-. The said notice was issued against the petitioner no.3 even though he had never signed any of the loan documents. Petitioner nos.1, 3 and 4 along with the said Soumyabrata Guha Sarkar had approached the learned DRT, Kolkata by filing an application being S.A No.16 of 2017. On 12.12.2019, the learned DRT upon hearing the respective Advocates, inter alia, directed the petitioners to provide viable OTS proposal with upfront payment within seven days after consultation with the creditor and the creditor, in turn, was directed to consider such proposal. The respondent no.5 was further restrained from taking any coercive steps till disposal of the OTS proposal. But all of a sudden, on 27.07.2021 the petitioners were served with an order dated 28th June, 2021 passed by the respondent no.1 herein in relation to a proceeding initiated under

Section 14 of the said Act of 2002 at the instance of the respondent no.6

It is further submitted that the order dated 28th June, 2021 cannot sustain the test of legality since the same is product of an illegal proceeding wherein the petitioners have been out rightly denuded of their right of representation in violation of the principles of natural justice.

Mr. Arunava Ghosh, senior counsel being assisted by Mr. Anindo Lahiri, learned counsel for the writ petitioner invites my attention to the various pages of the annexure at page 97 to 99, 100, 101, 101A, 102 and 113 being the impugned order to submit that principles of natural justice has not been adhered to and if the order impugned is allowed to be enforced, the petitioners would suffer irreparable loss and injury which cannot be compensated by money value. It is pointed out that the District Magistrate, South 24 Parganas in his order has clearly mentioned that there is no stay order from any court of law as submitted by the authorised officer in its affidavit. Adverting to the said portion of the order, my attention is brought to page 100 of the writ application in item being the notice of SARFAESI Act, 2002 dated 2.9.2019 wherein Deputy Collector and Deputy Project Director of MRDR/DC, South 24 Parganas, had called upon the Authorised Officer of Dewan Housing Finance

Limited to submit affidavit by authorised officer that no petition is pending before the DRT or any court of law as regards the said noted property and the present status of the tenancy, to contend that the District Magistrate, the concerned authority the respondent herein has clearly pointed out in his order that there is no information furnished by way of affidavit by the authorised officer of the respondent no.5.

In rebuttal Mr. Rohit Das, learned counsel appearing for the respondent no.6 submits that the assets and the properties and the entire rights and liabilities of the concerned Company being the respondent no.5 has been taken over by the respondent no.6 and a notice under Section 13(4) of the SARFAESI Act, 2002 was duly served on the petitioner and despite receipt of the notice calling upon them to liquidate the due of the financier, the petitioner has not paid heed to the said notice.

Learned counsel for the respondent no.6 placed reliance to a decision in case of *United Bank of India vs. Satyawati Tondon & Ors.* reported in (2010) 8 SCC 110 at paragraph 55 made to submit that the writ application is not at all maintainable.

It would be apt to reproduce the observation for profitable consideration which reads thus :

“55. *It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts*

continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

Reliance is also made to a decision in the case of *Jawahar Singh & Ors. vs. United Bank of India* of this Hon'ble Court reported in AIR 2015 Cal. 306 adverting my attention to contend that in the scheme of the SARFAESI Act principle of natural justice to a limited extent is available in view of Section 13 of the Act and provision of Section 14 of the said Act does not admit of any requirement of complying with natural justice by putting the borrower on notice.

Taking cue from the principles laid in the above cited decision and in particular the caution given by the Hon'ble Supreme Court and upon hearing the learned counsel for the parties and bearing in mind the provision of law under SARFAESI Act, this Court is of the view that though the authorised officer has not submitted with regard to the affidavit disclosing any pendency of the case in the matter of the property in question being SA 16 of 2017 before the DRT Tribunal-I, Kolkata, the writ application as the ground of no opportunity of being heard is not maintainable in law and this court is of the

view that the petitioner has remedy to prefer any appeal against the order passed by the respondent District Magistrate, 24 Parganas(South) before the Debt Recovery Tribunal under the provisions of Section 17 of the said Act.

At this stage, learned counsel for the petitioners submits for accommodation of time of fortnight to prefer such an appeal before the concerned authority and to grant interim protection to the petitioner for a fortnight. I do accept the submission and accordingly, the petitioner is at liberty to prefer the appeal before the DRT under the Act within fortnight and the order impugned be kept in abeyance for a period of two weeks.

Since no opportunity is given to the respondents to file affidavit, this order is passed without prejudice to the rights and contention of the respondents treating the averments in the writ petition being denied and disputed on behalf of the respondents.

Writ application being WPA 13044 of 2021 is thus, disposed of, however, without any order as to costs.

All parties shall act in terms of copy of this order downloaded from the official website of this Hon'ble Court.

(Shivakant Prasad, J.)