

S/L 47
22.12.2021
Court No.1
SD/Saswata

MAT 1353 of 2021
With
CAN 1 of 2021
(Via Video Conference)

Rainbow Productions Ltd.
Vs.
Aditya Birla Finance Ltd. & Ors.

Mr. Arindam Banerjee
Ms. Jayati Chowdhury
Mr. Animesh Paul

...for the Appellant.

Mr. Sagar Bandopadhyay
Mr. Amit Kr. Nag
Mr. Soumava Mukherjee

...for the Respondent Nos.1 & 2.

Mr. Ashis Guha
Mr. Naren Ghosh Dostidar

...for the State.

This appeal is at the instance of the borrower (respondent no.6 in the writ petition) challenging the order of the learned Single Judge dated 7th of December, 2021 passed in WPA 17492 of 2021 whereby the learned Single Judge has noted that for implementation of the order of the District Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the District Magistrate would be available on 24th of December, 2021 at about 11:30 a.m. and had directed the Officer-in-Charge of the concerned police station to render all assistance to take possession of the secured assets.

It is pointed out by the learned Counsel for the appellant that against the appellant proceedings under the

Securitization Act were initiated by the respondent/company and that questioning the order of the District Magistrate dated 16th of September, 2020, the appellant had approached the DRT, Kolkata under Section 17 of the Securitization Act and the said application was rejected by order dated 29th of November, 2021 passed in SA 103 of 2021 on the ground of limitation whereas the appellant was protected by the order of the Hon'ble Supreme Court whereby the limitation was extended during the COVID period. Hence, the appellant had filed M.A. No.11 of 2021 before the DRT for review/recall of the order. He submits that all these proceedings were suppressed by the respondent/borrower and the borrower has persuaded the learned Single Judge to pass the order impugned. He has also submitted that the DRT order dated 21st of December, 2021 has rejected the M.A. filed by the appellant without properly appreciating the ground raised therein and since DRAT is not functioning, therefore, in terms of the order of the Hon'ble Supreme Court dated 16th of December, 2021 passed in S.L.P. (C) No.10911 of 2021, the appellant will now be approaching the writ court challenging the said order but in the meanwhile the appellant be protected because in terms of the order of the learned Single Judge possession will be taken on 24th of December, 2021.

Learned Counsel for the respondent has opposed the appeal and has supported the order of the learned Single Judge by submitting that the appellant had remedy to approach the Tribunal in terms of the notice under Section

13(4) of the Securitization Act but he did not approach the Tribunal within time. Therefore, the application has rightly been rejected and that due amount has not been paid by the appellant, therefore, the action under Section 14 of the Securitization Act has rightly been taken. He has submitted that no interference in the order of the learned Single Judge is required.

We have heard the learned Counsel for the parties and perused the records.

The impugned order passed by the learned Single Judge reflects that the pending proceedings before the DRT were not brought to the notice of the learned Single Judge. In S.A. 103 of 2021 the appellant had challenged the legality and validity of the order passed under Section 14 of the Securitization Act which is sought to be implemented through the order of the learned Single Judge. After passing of the order under challenge, now the DRT, Kolkata by order dated 21st of December, 2021 has rejected the M.A. 11 of 2021 filed by the appellant. Since the order rejecting the review application has been passed by the DRT only on 21st of December, 2021 and the appellant intends to raise challenge to the said order questioning the very legality and propriety of the order passed under Section 14 of the Securitization Act, therefore, we are of the opinion that at this stage it would be in the interest of justice to grant some breathing time to the appellant to approach the appropriate forum challenging the order dated 21st of December, 2021.

Hence, without interfering in the impugned order, in order to give breathing time to the appellant, we dispose of the present appeal by directing that the order of the learned Single Judge will not be given effect to for a period of two weeks from today.

We make it clear that the challenge, if any, raised by the appellant to the order of the DRT, Kolkata dated 21st of December, 2021 will be decided by the appropriate Court/Forum on its own merit without being influenced by any observations made by this Court and without being influenced by the breathing time granted by this Court.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)