

07.
11.02.2021
Mithun

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA/289/2021

Smt. Anjali Pradhan and another.

-versus-

The State of West Bengal & Ors.

Mr.Pritam Roy, Adv.

...for the Petitioners.

Ms.Moutushi Sarkar

Mr.Dipankar Sen,Adv.

...for respondent No.3,

Uttar Banga Khetriya Gramin Bank.

Mr.Bikramaditya Ghosh,Adv.,

Ms.Bedashruti Bose, Adv.

...for the State respondents.

In the instant writ petition, the petitioner has raised a question as to whether the provision of Section 108 of the Indian Evidence Act regarding declaration of civil death and Indian Succession Act prevail over the SARFAESI Act or not. The brief fact leading a filing of the instant writ petition is that one Nimai Chandra Pradhan took loan of Rs.15,00,000/- to purchase a vehicle. He paid loan till June, 2018. Since 27th July, 2018, he was missing. Till date, he is not found in spite of lodging of missing diary. The present petitioners are the wife and son of the said Nimai Chandra Pradhan. As the petitioners failed to make

payment of E.M.I. for successive months, the bank initiated a proceeding under the SARFAESI Act after receiving notice of the proceeding under the SARFAESI Act, the petitioners file a statutory application No.86 of 2019 before the learned Debt Recovery Tribunal at Siliguri. The said application is pending at the stage of settlement. During the pendency of the said application, the petitioners are being threatened by some unknown persons presumably engaged by the bank authority and the bank authority illegally took possession of their residential house.

It is also alleged that the petitioners are ready to make payment of the entire loan amount by selling their properties mortgaged with the bank at higher rate of consideration price but the bank authority is not agreed to such proposal alleging, inter alia, that they have already taken possession over the said property.

It is also informed to the petitioners by the bank authority that even after they pay entire loan amount, the immovable property would not be transferred in their names and they will have to wait for seven years from the date of missing of the said Nimai Chandra Pradhan to obtain a declaration from the Civil Court as to whether civil death of the said Nimai Chandra Pradhan.

Therefore, the petitioner has prayed for before this Court for filing the instant writ petition to interpret as to whether SARFAESI Act shall prevail over Indian Evidence Act and Indian Succession Act or vice versa.

Having heard the learned Advocate for the petitioner, it is clearly ascertained that the instant writ petition is in the nature of reference.

Section 113 of the Code of Civil Procedure states the situation where reference can be made before the High Court regarding interpretation and applicability of some statutes for the opinion of the High Court. Section 113 of the Code of Civil Procedure is reproduced below:-

“113. Reference to High Court.- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the

reasons therefor, and refer the same for the opinion of the High Court.”

Section 113 of the Code of Civil Procedure, a Court is given the authority to refer any matter for the opinion of the High Court on the question of validity and applicability of any Act, Ordinance or Regulation or of any Provision contained in an Act. The instant provision be in the nature of reference, the petitioner is not permitted to refer the matter for opinion of the High Court regarding applicability of the Acts mentioned above.

In view of above discussion, I do not find any merit in the instant writ petition. Therefore, the instant writ petition is dismissed on contest. However, the petitioners are at liberty to take appropriate action in accordance with law to protect their rights.

(Bibek Chaudhuri, J.)