

WPO/264/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

PRIME TECHNOPLAST PRIVATE LIMITED
AND ANR.

-Versus-

INDIAN BANK, FORMERLY KNOWN AS
ALLAHABAD BANK

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.
Ms. Noelle Banerjee, Adv.
Mr. Rachit Lakhmani, Adv.
Mr. Nikunj Berliah, Adv.
...for the petitioner.

Mr. Om Narayan Rai, Adv.
...for the Bank.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 23rd July, 2021.

The Court : The writ petitioner is aggrieved by a sale conducted by the bank under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) Act, 2002 and violation of Rule 8(6) of the SARFAESI Rules, 2002.

It is submitted that the mandatory period of 30 days notice to the petitioner has not been complied with. It is also submitted that there is some error in the address of one of the

secured assets in the Notice of Sale. It is, therefore, submitted that since the address is not clear, competitive bids may not be received by the secured creditor.

Counsel for the Bank, Mr. Om Narayan Rai, raises the question of maintainability of the writ petition. It is submitted that the alternative remedy of the petitioner before the Debts Recovery Tribunal (DRT) to challenge the sale is available the writ petition should not be entertained on the ground indicated herein.

Reliance is placed on two decisions of the Supreme Court. Firstly, on Authorized Officer, State Bank of Trivancore and Anr. vs. Mathew K.C. reported in (2018)3 SCC 85 and on C. Bright vs. District Collector and Ors. reported in (2021)2 SCC 392.

It is now well settled that a forum prescribed under the statute must be normally availed by a borrower aggrieved by an action of a secured creditor, under the 2002 Act. There are, however, exceptions as held by the Hon'ble Supreme Court in the case of **Whirlpool Corporation vs. Registrar of Trademark** reported in (1998)8 SCC 1 as also on **Radha Krishan Industries vs. State of Himachal Pradesh & Ors.** reported in 2021 SCOnline SC 334.

This Court is of the view that the petitioner's case does not fall within the exceptions envisaged in the aforesaid two decisions to invoke the jurisdiction of the High Court under

Article 226 of the Constitution of India notwithstanding the availability of efficacious alternative remedy before the DRT.

Hence, WPO/264/2021 is dismissed with liberty, however, reserved to the petitioner to approach DRT in accordance with law. Since certain discrepancies are stated to have occurred in the process of sale, the bank shall not be precluded from considering the same in accordance with law.

There will be no order as to costs.

(RAJASEKHAR MANTHA, J.)

A/s.