

MAT 243 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022
With
CAN 3 of 2022

Tumpa Ghosh & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Ranjan Kali
Ms. Anindita Maity

... ... for the appellants

Mr. Santanu Kumar Mitra
Mr. Mirza Kumruddin

... ... for the State

Mr. Pijush Kanti Ray
Mr. Sourajit Mukherjee

... ... for the respondent no.6

The appeal has been preferred against the orders of the learned Single Judge dated 29.11.2021 and 24.12.2021 passed in WPA 14589 of 2021.

Since the appellants were not parties before the learned Single Judge, therefore CAN 3 of 2022 has been filed seeking leave to appeal and the appeal is against two different orders of the learned Single Judge and there is delay in filing the appeal, therefore CAN 1 of 2022 and CAN 2 of 2022 have been filed seeking condonation of delay.

It has been pointed out by the learned counsel for the appellants that the appellants were in possession of the flats in question and have been dispossessed in pursuant to the order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) as also by the orders of the learned Single Judge, therefore they are affected party and were required to be impleaded.

Considering the circumstances, we grant leave to file this appeal. As the appellants were not parties before the learned Single Judge and were not aware of the proceedings and order impugned, delay in filing the appeal is condoned and CAN 1 of 2022 and CAN 2 of 2022 are allowed.

The record reflects that respondent no.8 was the borrower from the respondent no.7 bank and had committed default in payment of the loan amount, therefore, proceedings under the SARFAESI Act were initiated and the order was passed by the competent authority under Section 14 of the Act.

The respondent bank had approached the Writ Court with a plea that the police authorities were not ensuring possession of the property in spite of an order under Section 14 of the Act. Hence, the learned Single Judge had initially passed the order dated 29.11.2021 directing the Inspector-in-Charge of the concerned police station to take over possession of second, third and fourth floors of the premises in question. Thereafter, by order dated 24.12.2021 the earlier order was corrected and instead of second, third and fourth floors it was mentioned first, second, third and fourth floors.

Submission of learned counsel for the appellants is that the appellants had purchased the flats in question from the borrower but in the proceedings under Section 14 of the SARFAESI Act as also before the learned Single Judge the appellants were not impleaded as parties, though they have right of hearing and that in pursuance to the order passed under Section 14 of the Act the possession has been taken from the appellants.

Learned counsel for the respondent bank has raised a plea that the flats which have been purchased by the appellants were mortgaged by the respondent borrower, therefore, he had no right to sell the flats in question and that in the writ petition the borrower was duly intimated and even otherwise if the appellants are aggrieved with the action under Section 14 of the Act, they have a remedy under Section 17 of the Act.

Having heard the learned counsel for the parties and on perusal of the record, we find that for the purpose of seeking protection, the appellants are first of all required to establish their right to purchase the property in question, if the same was mortgaged by the borrower with the bank.

An allegation of collusion between the borrower and the appellants has been made by the learned counsel for the bank during the course of the argument.

The appellants are aggrieved by the action which has been taken in pursuance to the order passed under

Section 14 of the Act, therefore they have the remedy to approach before the DRT under Section 17 of the Act.

That apart, if the appellants feel that they were entitled to be impleaded before the learned Single Judge and the orders impugned have been passed without hearing, then another remedy available to the appellants is to approach the learned Single Judge with the prayer to recall/review the impugned orders.

It is also noticed that the appellants have filed WPA 20656 of 2021 against the action initiated by the bank which is already pending.

In these circumstances, we are of the opinion that the grievance raised by the appellants need not be gone into this appeal. Hence, we dispose of the appeal with liberty to the appellants to pursue any of the remedies which have been mentioned above.

The appeal is accordingly disposed of.

All connected applications are also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)