

MAT 344 of 2022
(IA No. CAN 1 of 2022)

Mr. Khandakar Oliul Islam
Vs.
The State of West Bengal & Ors.

Mr. Pratik Majumdar,
Mr. Abul Mullick, Advocates
...for the petitioners

Mr. Anirban Ray, Ld. GP

Ms. Joyeeta Sinha,

Mr. Sandip Mandal, Advocates
...for the State

Mr. Avishek Guha,

Ms. Akansha Chopra, Advocates
...for the respondent Nos. 5

By this appeal, the writ petitioner has raised limited challenge to the order of the learned Single Judge dated 07th March, 2022 passed in WPA 2565 of 2022 whereby the proceedings under Section 14 of the SARFAESI Act, 2002 (for short, “the Act”) conducted before the District Magistrate and the order dated 29th July, 2018 has been quashed and set aside.

The appellant had approached the Writ Court questioning the action of the respondent bank taken under the Act and challenging the order dated 26th July, 2019 passed by the District Magistrate under Section 14 of the Act.

Learned Single Judge has found that there was some interpolation in the order dated 26th July, 2019, therefore, he has quashed the original order dated 24th July, 2018 and set aside the proceedings conducted by the District Magistrate under Section 14 of the Act.

Limited submission of learned Counsel for the appellant is that though the proceedings have been quashed but the possession has not been restored. As against this, learned Counsel for the respondent bank has opposed the appeal by submitting that even after quashing the order under Section 14 of the Act, the possession of the assets continues with the bank under Section 13(4) of the Act and that the learned Single Judge in the circumstances of the case has consciously not passed the order for restoration of possession.

Having examined the order of the learned Single Judge, we find that the learned Single Judge has duly taken note of the fact that the possession of the secured assets was handed over to the bank on 10th February, 2022. He has also taken note of the submission of the learned Counsel of the bank that the entire proceedings need not be affected by reason of the said interpolation and considering the circumstances of the case, has set aside the order dated 24th July, 2018.

Though the fact of delivery of possession on 10th

February, 2022 was before the learned Single Judge but there is direction for restoration of possession therefore, this Court is not in position of ascertaining if it was a conscious omission to issue such a direction or it was an accidental slip.

That apart, we also do not find that any such argument was advanced before the learned Single Judge, on the contrary, argument of learned Counsel for the respondent not to disturb possession has been taken note off. In these circumstances, we are of the opinion that the proper remedy available to the appellant at the first instance is to file an appropriate application before the learned Single Judge for modification/further direction.

Hence, we dispose of the present appeal giving liberty to the appellant to file an appropriate application before the learned Single Judge who is expected to duly consider the prayer made by the appellant in accordance with law.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)