

14 11.08.2022

gd/ssd

MAT/690/2022
IA NO: CAN/1/2022
MRS. TANAYA ROY
VS
PUNJAB NATIONAL BANK AND ORS.

Mr. Ranjan Kali
..for the Appellant

Mr. Abhishek Banerjee,
Ms. Payel Ghosh
..for the Respondents

By this intra court appeal the writ petitioner has challenged the order of the learned Single Judge dated 11.03.2022 whereby in WPA 12644 of 2021 has been disposed of since appellant had remedy before the DRT under the SARFAESI Act, 2002 against the impugned action.

The appellant is the e-auction purchaser of the property from the respondent/Bank and the appellant had failed to deposit the requisite auction amount, therefore, in the writ petition a prayer was made commanding the respondent/Bank authorities to extend the time to deposit the balance amount of money in pursuance to the auction sale held on 10th March, 2021.

Learned Single Judge has found that the appellant has a remedy before the DRT and, therefore,

he has disposed of the petition by observing that in the event the appellant prefers any application before the DRT, it may consider the same strictly in accordance with the SARFAESI Act, 2002 and any other relevant law.

Submission of learned counsel for the appellant is that the alternate remedy is not a bar and the learned Single Judge has not gone into the merits of the matter and that the appellant is ready to pay the entire amount.

Opposing the prayer, learned counsel for the respondent/Bank has pointed out that the time for making the deposit in terms of Rule 9 of the Security Interest (Enforcement) Rules, 2002 was extended, thereafter the amount has been forfeited in terms of the Rule and subsequent auction has also been done and the sale certificate dated 10.11.2021 has been issued to the subsequent purchaser and possession has been delivered.

Refusal to entertain a petition when alternate remedy is available is a self imposed restriction which has rightly be exercised by learned Single Judge in the present case.

Since the appellant has alternate remedy before the DRT under the SARFAESI Act, therefore, this Court does not intend to examine the merits of the

controversy at this stage. The very existence of any right of the appellant to deposit any further amount will be subject matter of adjudication before the DRT. Therefore learned Single Judge is justified in not entering into merits of the case.

Hence, we find that the order of the learned Single Judge does not suffer from any error and no case for interference is made out.

The appeal is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

