

27.06.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.1243 of 2022

**M/s. Basanti Automobiles
Vs.
HDFC Bank Limited Dept. for Special Operations**

Mr. Devranjan Dey,
Mr. Pradip Kar
...for the petitioner

Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee
...for the opposite party

The subject-matter of challenge in this revisional application is against an order dated 16th March, 2022, passed by learned District Judge, Purba Bardhaman, declining to grant any interim order of injunction.

By the impugned order, the appellate court proceeded to hear out the appeal providing an opportunity of hearing for the purpose to the other side, but at the same time declining to grant any ad interim order of injunction on the strength of the materials presented and pressed by the petitioner/appellant.

Mr. Dey, learned advocate appearing for the petitioner submits that opposite party/Bank suddenly reduced the quantum of financial assistance to petitioner/appellant, without issuing any notice for the

purpose, and thus breached the agreement already executed between the parties.

It is contended by learned advocate for the petitioner that there is a running business of motor bikes, and spare parts in the suit property, and it was made operative upon taking financial assistance from the opposite party/Bank.

It is further submitted by the petitioner that since there is a business in the suit property, the same should not be disturbed, when the petitioner has been liquidating loan amount.

Mr. Banerjee, learned appearing for the opposite party disputes with the submission, made by the petitioner submitting that SARFAESI Act proceeding has already been initiated upon issuing notice under Section 13 of the SARFAESI Act.

It is further submitted by Mr. Banerjee that the impugned order does not require any interference, as the Court below has not committed any wrong declining to grant any ad interim order of injunction in Misc. Appeal in absence of other side.

It is also contended by Mr. Banerjee that the suit is a ploy to stop SARFAESI proceeding, and there should not be any ad interim order of injunction.

Having considered the submission of both sides, it appears that steps have already been undertaken

under the provisions of SARFAESI Act against the petitioner/appellant.

It is thus clear that an opportunity of hearing was simply extended by the order impugned to the opposite party/Bank after declining to grant ad interim order of injunction.

In reply to the submission made by Mr. Banerjee, learned advocate for the petitioner submits that there has been complete infraction of law, and as such the appellate court ought to have passed ad interim order of injunction, so that the business run by the petitioner/appellant may not be disturbed.

It is very significant that Misc.Appeal is still pending, and the other side has already entered appearance. When upto now the business run by the petitioner over the suit property has not been disturbed, the pending Misc. Appeal may be disposed of expeditiously, and with the disposal of Miscellaneous Appeal, all the points now raised may be streamlined.

Petitioner is given liberty to raise all such points pertaining to the non application of the SARFAESI Act if there be any, and if any such point is raised, that shall be addressed to by the court below giving an opportunity of hearing to other side.

It is, however, clarified that the pending appeal may be disposed of within fortnight from the date of communication of this order.

This would not, however, prevent the petitioner to file an application proposing preponment of the date fixed by the appellate court below, upon notice to the other side. If any such application is filed by the petitioner/appellant, the same shall be considered in the light of the observation made in the body of the order. This order is passed without going into the merits of the case and without prejudice to the rights and contentions of the parties.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)