

S/L 103(ML)
12.07.2022
Court. No. 19
GB

WPA 11400 of 2022

Smt. Jhunu Paul & Anr.
VS
The State of West Bengal & Ors.

*Mr. Sankar Nath Mukherjee,
Mr. Niraj Gupta,
Mr. Priyabrata Saha.*

...for the Petitioners.

*Sk. Md. Galib,
Ms. Jyotsna Roy Mukherjee.*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioners allege overt act of the Inspector-in-Charge, Budge Budge Police Station. The allegation is that the police authorities wrongly assisted the bank authority, as a result of which all the articles, were lying inside the house of the petitioners, had been removed illegally. Neither any 'Panchnama' nor any inventory was prepared.

The police authorities have produced a report before this Court, from which it appears that on the strength of an order passed under Section 14 of the SARFAESI Act, 2002, possession was taken by the bank in the presence of the petitioners as also the learned Executive Magistrate. The police authorities were present. An inventory was made and a list was prepared in the presence of Mr. Sadhan Debnath, WBCS (Executive), South 24 Parganas and Executive Magistrate. The said inventory list was duly signed by the petitioners and the staff of the bank. The list was handed over to the petitioners. The inventorised articles were left in

the property in question under lock and key which were affixed in the presence of the Executive Magistrate, as also the parties. Between December 7, 2021 to June 4, 2022 requests were made by the bank to the petitioners, to remove the property. The police authorities were requested by the bank to be present on June 4, 2022 when the bank was to undertake removal of the household articles, as the petitioner failed to remove the articles.

The letter written by the bank to the Officer-in-Charge, Budge Budge Police Station, has been produced before this Court. It appears that although physical possession was taken on December 7, 2021 in the presence of the Executive Magistrate, the inventorised articles were not removed by the petitioners/defaulters. The petitioners were unwilling to take back the furniture and other articles. Two notices were issued by the bank, yet the borrower failed to remove the articles. The costs for removal of the articles and for police assistance was deposited by the bank through treasury challan and accordingly, assistance was given by the police authorities on June 4, 2022 for removal of the inventorised articles. The articles have been stored in the godowns, which have been mentioned as (i) ***“Premises of Atiyar Rahaman Sanfui S/o Masihar Rahaman Sanfui, 84/1, Yusuf Sanfui Road, Budge Budge, South 24 Parganas, West Bengal-700137*** and (ii) ***Premises of Annada Barui S/o Basudeb Barui, 20/1 Yusuf Sanfui Road, Budge Budge – 700137.”***

The petitioners on an earlier occasion moved this Court challenging the order passed by the District Magistrate dated February 20, 2020 under Section 14 of the SARFAESI Act, 2002. The said writ petition was disposed of with a direction upon the petitioners to approach the Debts Recovery Tribunal, for appropriate reliefs.

Thus, this Court does not find that the police authorities have acted either illegally or without any authority. The allegation of overt act is not substantiated. The entire exercise was done in terms of the provisions of the SARFAESI Act, 2002. However, if there are any procedural defects with regard to taking possession of the property in question and in removal of the articles by the bank, the said issues shall be decided in the pending proceedings before the Debts Recovery Tribunal-III, Kolkata.

This order shall not prevent the petitioners from approaching the bank in order to take back the articles.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)