

18.02.2022
Court No.13
Item No.30
sp

WPA 13962 of 2021

Sanjib Dutta & Ors.

Vs.

Vijaya Bank & Ors.

(Through Video Conference)

Ms. Kakali Samajpaty,
Ms. Sudipa Samanta,

... for the petitioners

Mr. A. Mondal,
Mr. S. Bhattacharya

...for the State

Mr. Dipanjan Dutta

...for the Bank

The petitioner challenges an order of the Debts Recovery Tribunal under Section 14 of the SARFAESI Act, 2002 on various grounds. The first of such grounds is that the outstanding dues under Section 13(2) notice are in the region of about 79 lakhs whereas the petitioner has offered, pursuant to orders of this Court, a sum of Rs. 75 odd lakhs in 2018.

The bank has proceeded to take possession of the immovable property, dispossess the petitioner and also taken steps to put up the property for sale.

The petitioner would argue that the action of the bank is an attempt to override the authority of this Court in the pending writ proceeding. According to the petitioner, the bank should not have taken possession or executed the order of the Magistrate during the pendency of the instant writ petition.

It is further submitted that the action of the bank in continuing with the recovery proceedings is in violation of the provisions of the Disaster Management Act, 2005 and the Pandemic Disaster Assistance Act, 2020 and the notifications issued by the State Government and the Central Government in this regard.

This Court has carefully considered the arguments of the petitioner. Admittedly, a proceeding under Section 17 of the DRT is already pending before the Debts Recovery Tribunal III at Kolkata being SA no. 136 of 2019.

The writ petition has been filed at the time when the Tribunal was not functional in view of the pandemic. The petitioner would urge this Court to consider the writ petition even now after Tribunal has opened, for the questions of law raised.

This Court has carefully considered the arguments of the petitioner and that of Counsel for the petitioner. It is now well settled that availability of an efficacious alternative statutory remedy would generally stand in the way of the writ exercising jurisdiction under Article 226 of the Constitution of India. Indeed, there are exceptions carved out. However, since the petitioner has already filed the aforesaid Section 17 proceeding challenging the entire recovery process of the bank which included Section 17 proceeding, the petitioner, in the opinion of this Court, should file an appropriate interlocutory application in the pending SA for being dealt with by the DRT –III at Kolkata.

It is submitted that the SA is now posted in May, 2022. If such interlocutory application is made, the Debts Recovery Tribunal –III or the tribunal in charge of the matters of the DRT-III shall take up the petitioner's application and dispose of the same in accordance with law as expeditiously as possible thereafter.

With the aforesaid observations, WPA No. 1396 of 2021 is disposed of.

It is submitted by Counsel for the bank that the Vijaya Bank has since merged with the bank of Baroda.

The cause title of the petition shall be suitably amended by the Advocate-on-Record for the writ petitioner in course of the day.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)