

30.06.2022
Ct. 5
D/L 14
ab

WPA 13081 of 2022

Soumitra Sen & Ors.

-Vs-

The Karnataka Bank Ltd. & Ors.

Mr. Rupak Ghosh,
Mr. Biswajib Ghosh,
Mr. Bijoy Bag,
Mr. S. Chakraborty

... for the petitioners

Mr. Subhashis Ghosh,
Mr. Soumen Barman,

... for the respondent Bank

The limited prayer of the petitioners is for stay of a sale notice dated 30th May, 2022 of the immovable property belonging to the petitioners. The date of sale admittedly fixed today, i.e. 30th June, 2022 and the petitioners state that the petitioners received the said notice on 11th June, 2022. Admittedly, the petitioners approached the Debts Recovery Tribunal (DRT) by an application for interim relief on 27th June, 2022. The prayers in the interim application, which are before this Court, are for restraint on the respondent Bank from proceeding in terms of the impugned sale notice dated 30th May, 2022.

The other contention made on behalf of the petitioners is that by an order of 12th April, 2022 passed by the Presiding Officer of the DRT-3, the respondents were directed to file an affidavit-in-opposition to the petitioners' application and to respond to the petitioners' representation within three weeks from the date of the order. Admittedly, although the affidavit-in-opposition has been filed, the respondents did not react to the petitioners' representation. The matter was made returnable on 18th May, 2022. The matter was adjourned on that date and was fixed next sometime in June, 2022. Cease-work by the members of the Bar before the DRT-3 started from 4th June, 2022 for which record is also before the Court. According to the learned counsel appearing for the respondent Bank, although advocates are not appearing before the DRT-III, there is no bar on the parties appearing in person.

After hearing counsel, the undisputed fact is that the DRT-3 is not functioning after 4th June, 2022 and the cease-work is continuing as on date. The impugned notice of sale dated 30th May, 2022 issued at a time when the petitioners' application was pending before the DRT-3. Pending final order in that matter, the respondent Bank could not have issued the impugned notice of sale. This would be against the principles of fair play since the petitioners' application is pending as on date and the petitioners are unable to approach the

DRT-3 through their lawyer for effective relief. The fact of the parties being at liberty to approach the DRT-3 in person is not sufficient reason to allow the Bank to proceed with the impugned notice of sale since a party should have the opportunity of being represented through its lawyer for effective hearing of a matter.

In view of the above facts, there shall be an order of restraint in respect of the impugned notice of sale dated 30th May, 2022 till one week after the DRT-3 starts functioning in earnest and/or the cease-work comes to an end, whichever is earlier. The parties shall of course have the liberty of approaching the DRT-3 for appropriate orders.

It is made clear that this Court has not gone into the merits of the matter.

Liberty is given to file the Vakalatnama on behalf of the respondent Bank by 4th July, 2022 by 4.30 p.m.

WPA 13081 of 2022 is disposed of in terms of the above.

(**Moushumi Bhattacharya, J.**)