

11.08.2022

**FMA 972 of 2022
With
CAN 1 of 2022**

**Bank of Baroda & Anr.
Vs.
Panchwati Enclave Private Limited & Ors.**

Mr. Siddhartha Banerjee
Mr. Avishek Guha
Ms. Akansha Chopra
Ms. Debarati Das

... ... for the appellants

Mr. Arijit Bardhan
Mr. Sarosij Dasgupta
Mr. Soumyajit Mishra

... ... for the respondent nos.1 to 3

This intra-court appeal at the instance of the bank is directed against the order of the learned Single Judge dated 17.06.2022 whereby WPA 10787 of 2022 has been disposed of by granting interim protection to the respondents herein (writ petitioners) against the sale notice dated 25th May, 2022.

The facts in a nutshell are that the principal borrowers had committed default in repayment of the loan amount and the respondents herein (writ petitioners) were the guarantors. The appellant/bank had initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and had issued the first sale notice dated 16.09.2021 for auctioning certain properties. The said sale notice was the subject matter of challenge at the instance of the writ petitioners in SA 431 of 2021 wherein DRT-III, Kolkata had passed the order dated 04.10.2021

directing the appellants to defer the date of auction considering that the auction was to be conducted during the Puja vacation and also considering the inconvenience to the prospective bidders.

Thereafter e-auction date was extended which was again considered by the DRT-III on 05.11.2021 whereby the tribunal had stayed the extension sale notice and thereafter the SA 431 of 2021 was heard by DRT-III on 21.03.2022 and reserved for final order with liberty to parties to file written arguments within ten days.

It has been pointed out by learned counsel for the parties that the Presiding Officer who had heard the SA 431 of 2021 on 21.03.2022 has demitted office without pronouncing final order. Therefore the SA 431 of 2021 is required to be heard afresh.

Subsequently, fresh sale notice dated 25.05.2022 was issued. First two properties mentioned in the fresh sale notice were also part of the earlier sale notice. Thus questioning fresh sale notice the writ petitioners have filed an interlocutory application in pending SA 431 of 2021. Since meanwhile there was a cease work in DRT-III, therefore the writ petitioners had approached the learned Single Judge by filing the petition with several prayers along with the prayer for cancelling the e-auction sale notice dated 25.05.2022.

Learned Single Judge while passing the impugned order has compared the two sale notices and has

recorded that the only difference was that the order of the two properties was changed in the said sale notices. Learned Single Judge has also held that appellant/bank cannot be allowed to take objection to jurisdiction of DRT-III. Learned Single Judge has granted interim protection to the writ petitioners against the second sale notice and requested the Presiding Officer of the DRT-III to dispose of the SA 431 of 2021.

In this appeal it has been pointed out by learned counsel for the appellants that since there is no Presiding Officer therefore DRT-III is not functioning and there is no possibility of early disposal of the SA 431 of 2021 by the DRT-III.

It is undisputed before this Court that DRT-I is functioning which has jurisdiction for second sale notice. Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 permits that Chairman of the Appellate Tribunal to transfer any case from one tribunal for disposal to another tribunal.

We are of the opinion that present case is a fit case for exercise of discretion of transferring the pending SA 431 of 2021 from DRT-III to DRT-I so that it can be disposed of at the earliest. Therefore appellants are permitted to file appropriate application for transfer before the Chairman DRAT.

Since DRT is required to go into all the issues and objections of the parties, therefore we direct that the

tribunal will decide the pending application without being influenced by any observation made by the learned Single Judge in the order under appeal.

We also expect that on passing the appropriate transfer order by DRAT the SA 431 of 2021 pending before the DRT will be decided without any unnecessary delay, preferably within four weeks keeping in mind that learned Single Judge has granted interim protection to the writ petitioners without going into the merits of the case. Unnecessary delay in deciding the SA will cause prejudice to the rights of the appellants.

The interim protection granted by the learned Single Judge in the order under challenge will continue till the decision of SA 431 of 2021 by DRT.

The appeal and the connected application are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)