

11th July, 2022
(D/L No.15)
(SKB)

W.P.A. 14637 of 2022

Galaxy Prodev Pvt. Ltd. and others
-Versus-
Debts Recovery Tribunal-III, Kolkata & Others

Mr. Suman Kumar Dutt,
Mr. Shayak Mitra,
Mr. Kaushik Banerjee,
Ms. Rashmita Sen

... for the petitioners.

Mr. Avishek Gupta,
Ms. Akansha Chopra

... for respondent nos.5 & 6.

The affidavit of service is taken on record.

The essential relief prayed for by the petitioners is for an opportunity of a proper representation before the DRT-III, which is presently not functioning by reason of a continuing cease work.

The notice issued under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (The SARFAESI Act, 2002) was of 13th February, 2020. The petitioners filed the appropriate application to DRT-III on 31st August, 2020. Nothing much happened before the DRT-III thereafter save and except, an order passed by the District Magistrate, South 24 Parganas, on 18th March, 2022 which compelled the petitioners to file pleadings bringing subsequent facts on record before the DRT-III. Since the DRT-III went into cease work in the first week of June, 2022, the petitioners filed an application for transfer under Section 17-A(2) of the Recovery of Debts and Bankruptcy Act, 1993. The said application for transfer was, however, treated as an appeal and

admitted by the DRAT and made returnable for hearing on 20th July, 2022.

Learned counsel appearing for the petitioners apprehends that punitive action may be taken by the Financial Institutions against the petitioners in terms of the notice of the District Magistrate of 18th March, 2022 which was received by the petitioners on 20th May, 2022.

Learned counsel appearing for the Financial Institutions places an order passed by a co-ordinate Bench in an application made under Article 227 of the Constitution which was also incidentally listed for transfer before the DRAT on the same set of facts, namely, the DRT was not functioning. By an order dated 8th July, 2022 in C.O. 1761 of 2022, the concerned Bench of the DRT was requested to allow the petitioner to move the application in person on a convenient date. Counsel submits that although the DRT-III is not functioning, there is no bar to litigants appearing in persons.

The question before this court is whether the petitioners should be dispossessed of the property under the provisions of The SARFAESI Act, 2002, without being given an opportunity of a proper representation. Section 17(1) provides for that remedy and also fixes a time limit within which the DRT-III has to dispose of the application.

In the present case, the petitioners have admittedly, expired all possible options for getting the matter heard. The DRAT, fixing the application for transfer, has made the matter returnable on 20th July, 2022. This may be too long time for the petitioners since the punitive action may be taken by the Financial Institutions before the returnable date. In any event, the application, which is a part of the record, was

essentially for transfer and not in appeal from any order passed by the DRT.

Taking all these facts into action, this court is of the view that the petitioners must be given a chance to effectively present their case under the statute remedy available to the petitioners under the provisions of The SARFAESI Act, 2002. If the DRT-III, for whatever reason, is presently not in seisin, the petitioners must be protected by a limited order until the impasse is resolved. There shall be accordingly an order restraining the Financial Institutions from taking any coercive action against the petitioners till the cease work before the DRT-III is resolved.

W.P.A.14637 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)