

August 3, 2022
Sl. No.5
Court No.1
s.biswas

MAT 1129 of 2022
With
CAN 1 of 2022

State Bank of India and another
vs.
Shankar Saw Mills Private Limited

Mr. Joy Saha, Sr. Adv.
Mr. Pijush Kumar Ray,
Mr. Om Narayan Rai, Advocates

... for the appellants

Mr. Dulal Dey, Advocate

... for the respondent

This appeal is at the instance of the respondent Bank challenging the order of the learned Single Judge dated 14.07.2022 whereby WPA 13353 of 2022 has been allowed and the learned Single Judge has directed to remove all the preventive measures which have been put by the appellant including the padlock within 72 hours in the premises in question and also directed the appellant Bank to extend the period of settlement sanctioned by it for a further period of six months from the date on which the writ petitioner can resume its business in full steam.

Learned counsel for the appellants referring to the documents filed before this Court has submitted that against the order passed under Section 14 of the SARFAESI Act by the District Magistrate, South 24 Parganas on 12th November, 2020, the writ petitioner had preferred an application being SA 322 of 2021 before the Debts Recovery Tribunal and the same was dismissed on 15th November, 2021. Against this, no appeal was preferred.

He has further submitted that a challenge was also raised to E-auction by filing WPA 21512 of 2021 by the writ petitioner which was dismissed by the order dated 11th March, 2022 by permitting the appellant Bank to take appropriate steps to put up the secured assets for sale in accordance with law and in terms of the provisions of the SARFAESI Act, 2002. He has also pointed out that MAT 419 of 2022 against this order was dismissed by the Division Bench by the order dated 05.05.2022 finding no error in the order of the learned Single Judge.

He submits that before the learned Single Judge in the present case since no opportunity was given to file affidavit-in-opposition, therefore these facts could not be placed on record. He has also submitted that the writ petitioner is also not entitled to get relief as at earlier three occasions, he had committed default in complying with conditions of the OTS proposals and in this regard he has referred to OTS proposals dated 02.03.2019, 14.07.2020 and 25.01.2022 and has submitted that even the judgment of the Division Bench of the Punjab and Haryana High Court in CWP No.12953 of 2018 (O & M) dated 10.03.2022 on that account is distinguishable, but even the said fact could not be placed before the learned Single Judge.

Learned counsel for the respondent after arguing for some time has not disputed that the appellant did not have the opportunity to place the above facts before the learned Single Judge. He has agreed for remanding the

matter back to the learned Single Judge for fresh decision on merit after giving opportunity to the other side to file affidavit-in-opposition.

Having examined the order of the learned Single Judge under challenge, we find that though there is a direction to open the padlock, but the necessary documents relating to challenge to the order of the District Magistrate under Section 14 of the SARFAESI Act, 2002 before the DRT and dismissal of the SA by the DRT as also the order passed in WPA 21512 of 2021 and its affirmation by the Division Bench, were not before the learned Single Judge. These orders require consideration while examining the prayer for a direction to open the padlock and to hand over the possession of the secured asset to the writ petitioner/borrower.

In the present case, since the appellant Bank did not have any such opportunity to file the affidavit-in-opposition and place the above documents on record, therefore we set aside the order of the learned Single Judge and remit the matter back for fresh decision in accordance with law after giving an opportunity to the parties to file the affidavit-in-opposition and affidavit-in-reply.

Learned counsel for the appellants has also objected to the maintainability of the writ petition, hence the said issue is left open.

The writ petition will be decided afresh without being influenced by any observation made on merit in this order.

The appeal and connected application are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]