

Item-41 16-02-2022

FMA 1310 of 2021
CAN 1 of 2021

sg Ct. 8

State Bank of India
Versus
Gholam Sarwar & Ors.

(Through Video Conference)

Mr. S. Pal Choudhury, Adv.
...for the appellant
Md. N. Rahbar, Adv.
Md. Adnan Alam, Adv.
Ms. Anjana Mehbub, Adv.
Mr. Jawad Alam, Adv.
...for the respondents

There shall be an order in terms of prayer (a) of the stay petition.

We are of the view that the impugned order, in fact, affects the valuable right of the applicant bank to continue with the measures adopted under the SARFAESI Act. The order in substance is affecting valuable right of the applicant to enforce its legal right under the SARFAESI Act. It is elementary that if the person is aggrieved by any of the measures taken by the Bank under the provisions of the SARFAESI Act, remedy has to be availed under the said Act as this is held to be a self-contained Code. However, the facts are to be considered to decide if the suit would be maintainable as in ***Delta International Limited & Ors. vs. Nupur Mitra & Ors.*** reported at ***AIR 2018 CAL 18*** a Division Bench of this Court allowed a suit to survive or in case of a prior tenancy where the tenants have certain protections as held in ***Bajrang Shyamsunder Agarwal vs. Central Band of India*** reported in ***2019 (9) SCC***

94.

We have been informed that an application has been filed for rejection of the plaint.

In the event a sum of Rs.1,00,000/- is deposited with the bank, the bank shall not proceed under the SARFAESI Act as it would cover almost 50% of its dues payable under the mortgage for which measures presumably has been taken till a final decision is taken by the learned Trial Court in this regard. The said deposit shall be without prejudice to the rights of the respondents.

The order of the learned Trial Court stands modified to the aforesaid extent. The order of the learned Trial Court shall stand unconditionally extended for a period of two weeks from date and in the event such deposit is made, the same shall continue till the disposal of the pending applications.

The learned Trial Court shall give preference to the application filed under Order VII Rule 11 and decide the said application before any other application pending before it, preferably, within a period of ten weeks from the date of communication of this order subject to the convenience of the Trial Court.

The State Bank of India shall create a separate fixed deposit account earmarked for the suit in respect of the said sum and the said amount shall be invested in a short term fixed deposit account yielding highest return till the disposal of the applications pending before the learned Trial Court. The learned Trial Court while disposing of the pending applications shall give appropriate directions with regard to the amount deposited

by the plaintiffs in terms of this order.

We make it clear that our observation is prima facie. We feel that the bank should have been heard before the said order was passed. While disposing of the matter on merits the learned Trial Court shall not be influenced by the observations made by us in this order.

The appeal and the applications stand dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)