4th August, 2022
(D/L No.13)
(SKB)

W.P.A. 17609 of 2022

Sanjay Kumar Shaw
Versus
The State of West Bengal and others

Mr. Rupak Ghosh,
Mr. Biswajib Ghosh,
Mr. Avirup Chatterjee,
Mr. Anup Kumar Singh
… for the petitioner.

Mr. Debasish Ghosh,
Mr. Shayak Chakraborty
… for the State.

Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee
… for respondent no.4.

The affidavit of service is taken on record.

The petitioner has challenged a Notice of Possession by Asset Reconstruction Company (India) Ltd. ('ARCIL') dated 20th July, 2022 by which the addressees of the Notice, one Mr. Ramesh Roy and Smt. Sabita Roy have been charged of failure to discharge their liabilities within the statutory period as secured creditors under the provision of The SARFAESI Act, 2002. The impugned Notice also refers to an order of possession under Section 14 of The SARFAESI Act, 2002 dated 26th November, 2020.

The material on record indicates that the petitioner is not the borrower with reference to the impugned Notice but purchased a different flat on a different area as a *bona fide* purchaser evaluated from a different Cooperative Bank altogether. The Bank is not the secured creditor before the court. It also appears that pursuant to such purchase, a certificate of sale was executed in favour of the petitioner and a registered conveyance was also executed thereafter. The petitioner was in possession of the flat on and from 14th May, 2020. The petitioner remained in possession till 2nd August, 2022 when the petitioner was dispossessed from the flat by the secured creditor who is before the court.

There is no doubt that the description of the property as mentioned in the schedule to the certificate of sale and the description mentioned in the impugned Notice are different. Not only the flat number is different but the area is also different.

The petitioner has also not been named in the impugned Notice which bears the names of two other persons who are said to be the other borrowers of the land. The objection taken on behalf of the ARCIL is that the petitioner has come to the writ court for relief despite a statutory remedy being available to the petitioner.

This court is also of the view that in order to show *bona fides*, the petitioner must first file an application before the Debts Recovery Tribunal, which is the statutory forum available to the petitioner.

However, being satisfied of the facts before the court and that the petitioner is not the borrower of the loan but a *bona fide* auction purchaser of a different property, ARCIL is restrained from taking any further steps in terms of the impugned Notice dated 20th July, 2022 until the DRT-III resumes functioning upon appointment of a new member or the application to be filed by the petitioner is to be assigned before any other Bench of the DRT. ARCIL is given liberty to expedite the application which is to be filed by the petitioner. This order is made subject to the petitioner filing the appropriate application before the DRT within 9th August, 2022.

W.P.A.17609 of 2022 is disposed of in terms of the above.

Since this court has not gone into the merits of the case, any disputed question of fact will be adjudicated by the DRT.

ARCIL shall permit the petitioner to take all articles of daily necessities from the flat in question within a period of one week in the meantime.

(Moushumi Bhattacharya, J.)