August 25, 2022
Sl. No.6
Court No.1
s.biswas

MAT 1232 of 2022
With
CAN 1 of 2022

Aniruddha Mukherjee and another
vs.
The Authorised Officer, Cholamandalam Investment & Finance Company Limited and others

Mr. Abhrajit Mitra, Senior Advocate
Mr. Jishnu Choudhury,
Mr. S. Medda,
Mr. Arjun Mukherjee, Advocates
... for the appellants
Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee, Advocates
... for the respondent No.1
Ms. Piyali Sengupta,
Mr. Ratul Das, Advocates
... for the State

By this intra-Court appeal the writ petitioner has challenged the order of the learned Single Judge dated 25th July, 2022 whereby WPA 16454 of 2022 has been dismissed taking note of the fact that the appellants have remedy before the DRT under the SARFAESI Act, 2002.

In a nutshell, the appellants were defaulting borrower against whom the proceedings under Section 13 of the SARFAESI Act were initiated by serving notice under Section 13(2) and 13(4) of the Act. The appellants had challenged the notice issued under Section 13(4) dated 16.10.2019 by filing SA application under Section 17 of the Act, thereafter order under Section 14 of the Act on 28.11.2019 and sale notice dated 13th March, 2020 was issued which again became the subject matter of challenge in SA 184 of 2020 under Section 17 of the SARFAESI Act.

Since by order dated 27.07.2020 SA 624 of 2019 was allowed and the notices issued under Section 13(2) and 13(4) was set aside, therefore it has been pointed out that SA 184 of 2020 also became infructuous. Subsequently, fresh notice under Section 13(2) of the SARFAESI Act dated 08.03.2021 and the possession notice under Section 13(4) dated 25.11.2021 were issued and the order dated 22.04.2022 under Section 14 of the SARFAESI Act was passed. The appellants had filed interlocutory application in pending SA 184 of 2020.

Since DRT-III was not functional where SA 184 of 2020 was pending, therefore appellants had approached the writ Court by filing WPA 16454 of 2022 challenging the order under Section 14 of the Act.

Learned Single Judge has reached to the conclusion that since the appellants had not challenged the notice dated 18.03.2021 under Section 13(2) and 25.11.2022 under Section 13(4) of the Act, therefore the application under Section 17 against the order dated 22.04.2022 under Section 14 cannot be maintained.

We find substance in the argument that the order under Section 14 of the Act can be independently challenged under Section 17 of the Act even if the notices under Section 13(2) and 13(4) were not questioned by the borrower.

It is undisputed before this Court that subsequently the order under Section 14 dated 22.04.2022 has been executed and the bank had taken physical possession of the property in question.

Since the appellant has a remedy before the DRT under Section 17 of the Act, therefore we are of the opinion that the appellants should avail that remedy.

Since DRT-III is presently not functioning, therefore attention of the Court has also been drawn to Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 which permits the Chairman, DRAT to transfer any case from one tribunal to another for disposal.

Under the facts and circumstances of the case, learned counsel for the appellants has sought leave to file independent application under Section 17 of the SARFAESI Act before the DRT-III challenging the order under Section 14 of the Act and to file appropriate application before the Chairman, DRAT to transfer the application to the appropriate DRT, Kolkata which is functional.

The only submission of learned counsel for the bank is that it should be a time bound process.

Hence, we dispose of present appeal permitting the appellants to file an independent application under Section 17 of the SARFAESI Act challenging the order under Section 14 dated 22.04.2022 before the DRT within a period of 10 days from today and in case the concerned DRT is not functioning, then to file application before the Chairman, DRAT within a period of four weeks from today for transferring application to another DRT which is functional. On filing such application, the DRT/Chairman, DRAT will take appropriate decision expeditiously. Till application for interim relief is heard by the DRT, the respondent Bank is restrained from holding auction/sale of the property.

Needless to say, if application under Section 17 so filed, it will be considered by the DRT in accordance with law.

If any issue of limitation is raised by the respondent, the Tribunal will duly consider and taking into account the effect and applicability of Section 14 of the Limitation Act.

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.]