22nd August, 2022
(AK)
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W.P.A 18734 of 2022

Parimal Payra
Vs.
The Punjab National Bank and others

Mr. Probal Kr. Mukherjee
Mr. Nrimani Srinivasan
Mr. Debanjan Bhattacharjee
Mr. Rajdeep Bhattacharyya
Ms. Swarnali Saha
…for the petitioner.

Mr. Abhishek Banerjee
…for the respondent nos.1 to 7.

Mr. Saptanshu Basu
Mr. Samrat Mukherjee
…for the respondent-purchaser.

The learned Senior Advocate appearing for the petitioner contends that the impugned notices dated August 11, 2022 (copies annexed at pages-77 and 78 of the present writ petition) were issued by the respondent-Bank patently without authority or jurisdiction.

It is submitted that a proceeding is pending before the Debts Recovery Tribunal at the behest of the present writ petitioner under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

In the same, initially a status-quo order was granted at the instance of the petitioner but was subsequently vacated behind the back of the petitioner, a recall of which vacating order has been sought by the petitioner, in turn, before the tribunal.

However, during the pendency of such recall application of the petitioner, the respondent-Bank have issued the impugned notices, one being by way of a final reminder to the petitioner, in the same breath asserting that the Bank has taken physical possession of the subject matter-property but that the petitioner was advised to take out the petitioner's household goods from the premises under physical possession.

The second notice was to the Officer-in-Charge of the Contai Police Station, seeking police assistance in that regard.

Learned counsel for the respondent-Bank submits that the respondent-Bank took physical possession of the premises previously. Now the entire property, it is submitted, is lying in the custody of the subsequent purchaser.

The learned Senior Advocate appearing for the subsequent purchaser contends that the notices-in-question were taken out in due consequence of the order of vacating the stay order passed by the tribunal and, as such, the Bank could not be faulted for issuing the same.

Upon hearing learned counsel for the parties, it is palpable that the two notices dated August 11, 2022, copies of which have been annexed at pages-77 and 78 of the writ petition, were issued by the respondent-Bank patently without authority and/or jurisdiction.

First, in view of the Bank asserting that it has already taken physical possession, it was beyond any rhyme or logic for the Bank again to assert that the writ petitioner remove his goods from the property.

More importantly, since it is submitted that a completed sale has been effected by executing a registered deed of transfer, the Bank cannot have any *locus standi* to issue the notices challenged herein.

Moreover, since the application for recall of the petitioner is pending before the concerned DRT but is not being taken up due to vacancy in the concerned Bench of the DRT, that is, the Second Bench, it would only be proper if the impugned notices are quashed.

Accordingly, WPA 18734 of 2022 is allowed, thereby setting aside and quashing the impugned notices dated August 11, 2022 (Annexure-P6 collectively at pages-77 and 78 of the writ petition) and granting liberty to the petitioner to approach the now-functioning First Bench of the DRT, Kolkata to take up for hearing and pass orders on the application for recall filed by the petitioner, pending currently before the vacant Third Bench of the DRT.

If such an application is made, the DRT-1 shall decide on the same as expeditiously as possible, in accordance with law, preferably within a fortnight from the date of making of such application.

The merits of the respective contentions of the parties in the application under Section 17 of the SARFAESI Act, 2002 and/or connected proceedings have not been gone into by this court in any manner whatsoever.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)