

S/L. 15.
August 26, 2022.
MNS.

WPA No. 19004 of 2022

Sri Subhas Dutta
Vs.
UCO Bank and others

Mr. Mohit Gupta,
Mr. Jit Ray,
Mr. Rahul Adhikary

... for the petitioner.

Mr. Arjun Mookherjee

...for the respondent-Bank.

Affidavit-of-service filed in Court today be
kept on record.

Learned counsel for the petitioner
contends that the petitioner has challenged the
sale notice in respect of the petitioner's property
in respect of a proceeding undertaken by the
respondent-Bank, that is, the UCO Bank, under
the provision of Section 13 of the Securitisation
and Reconstruction of Financial Assets and
Enforcement of Security Interest Act, 2002 (in
short "2002 Act").

It is submitted that in the notice dated
January 25, 2022 given to the petitioner under
Section 13(2) of the 2002 Act, it was indicated
that the debt of the petitioner was classified as

Non-Performing Asset (NPA) on May 31, 2021, whereas the intimation dated April 5, 2021, which is contemporaneous with the alleged declaration, indicates that the date of declaration of classification as NPA was March 31, 2021.

In view of such gross discrepancy, it is submitted that the notice under Section 13(2) as well as the consequential proceeding, including the measures under Section 13(4) of the 2002 Act and the auction sale proposed to be held by the Bank, are vitiated.

Learned counsel for the petitioner further submits that since the DRT-II, Kolkata, is now lying vacant, the petitioner does not have an alternative forum to prefer the present challenge. As such, the writ petition ought to be entertained.

Learned counsel appearing for the respondent-Bank submits that, under Section 17(A) of the Recovery of Debts and Bankruptcy Act, 1993, the appropriate Forum for allocating a matter to a different Bench, in case of non-availability of a Bench of the DRT, is the Appellate Tribunal. Having not taken such recourse, the petitioner cannot now contend that the DRT-II is lying vacant and/or take the same

as an excuse to move this writ petition before this Court.

It is further submitted that Section 17 of the 2002 Act stipulates the limitation for challenging the measure under Section 13 of the 2002 Act to be forty-five days, which was long exceeded even at the time of presentation of the present writ petition by the petitioner.

It is submitted that, thus, even if a challenge under Section 17 of the 2002 Act had been preferred before the DRT concerned, the same would be liable to be rejected on the ground of limitation alone. As such, to bypass the said limitation period, the present challenge under Article 226 of the Constitution cannot be entertained.

Upon hearing learned counsel for the parties, it transpires that the arguments made by learned counsel for the Bank are substantial and acceptable. Since the writ petition itself was filed much subsequent to the expiry of the limitation period for preferring a challenge under Section 17 of the 2002 Act, the self-same challenge cannot be permitted in the garb of a writ petition under Article 226 of the Constitution.

Apart from the relief being time-barred, the petitioner also had a remedy before the Appellate Tribunal to seek an alteration of the designated Bench for hearing its application under Section 17 of the 2002 Act, if filed. Having not taken recourse to such provision, there is no reason for this Court to entertain the writ petition.

Accordingly, WPA 19004 of 2022 is dismissed as not maintainable without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)