

14.09.2022.
Court No.13
Item No. 39
ap

W.P.A. No. 19879 of 2022

**State Bank of India
Versus
The State of West Bengal & Ors.**

Mr. Prabal Mukherjee, ld. Sr. Advocate,
Mr. Om Narayan Rai,
Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee.

...For the petitioner.

Mr. Asish Kumar Guha,
Mr. Naren Ghosh Dastidar.

..For the State.

Mr. Deepan Kumar Sarkar,
Mr. Aditya Roy.

...For the respondent no.7.

Mr. Debasis Kar,
Mr. Arka Tilok Bhadra.

...For the respondent no.8.

Mr. Suddhasatva Banerjee,
Mr. Anirban Datta,
Mr. Sayantan Sinha.

...For the Intervenor.

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

The writ petition is directed against the alleged
inaction by the Shakespeare Sarani Police Station in
respect of a complaint dated 26th August, 2022.

The brief facts relevant in the case are that the
State Bank of India obtained possession on the 29th of
July, 2022, of a property under the orders of the Chief
Metropolitan Magistrate at Kolkata under the
provisions of Section 14 of the SARFASEI Act, 2002.

The possession was given by the Bailiff with the assistance of Shakespeare Sarani Police Station.

The Bank claims that since after getting possession and putting up a padlock thereon, the same was cut off and removed and another padlock was put on in the said premises by one M/s. Mirador Commercial Private Limited. The latter claims to be a tenant of the property. The bank has filed a complaint with the Shakespeare Sarani Police in this regard.

The Bank complains that Shakespeare Sarani Police Station have not taken any steps despite receiving the complaint which discloses a cognizable offence and the same is in violation of the dicta of the Hon'ble Supreme Court of India in the case of ***Lalita Kumari – Vs. – Government of Uttar Pradesh & Ors.*** reported in ***(2014) 2 SCC Page 1.***

Mr. Suddhasatva Banerjee, Learned Counsel appearing on behalf of M/s. Mirador Commercial Pvt. Ltd. claims that his client is a lawful tenant in respect of the property. He submits that even prior to the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) under which the Magistrate directed delivery of possession to the Bank a proceeding being S.A. No. 89 of 2011 has been instituted by his client before the Debts Recovery Tribunal-II, Kolkata, in respect of an earlier proceeding

under Section 14 of the SARFASEI Act. It is further submitted that earlier Section 14 application by the Bank, has not been pursued and is pending.

It is also submitted that a Civil Suit was also instituted by his client challenging the proceedings under Section 13 and 14 of the SARFASEI Act, 2002, filed by the Bank.

Mr. Banerjee submits that his client, after being illegally dispossessed, had approached the Chief Metropolitan Magistrate along with the documents evidencing his tenancy and the Magistrate appears to have ordered restoration of possession back to his client, i.e. M/s. Mirador Commercial Pvt. Ltd. on 17th August, 2022.

It appears from the said order dated 17th August, 2022 that it is the 'Bank' that was directed to restore possession to Mr. Banerjee's client. It appears M/s. Mirador have taken back possession from the Bank without the Bank's concurrence, in derogation of the CMM's order dated 17th August, 2022.

Letters, from the tenant to the Bank, asking for possession and the alleged restoration of possession of Bank are sought to be produced before this Court. The Bank has denied receipt of the said letters.

This Court prima facie finds that Shakespeare Sarani Police Station ought to have taken steps as

mandated in the ***Lalita Kumari***'s decision (supra) in respect of the Bank's complaint.

The facts relevant for this case are all before this Court. The parties are, therefore, not required to file affidavits. However, given the diversity of facts disclosed and the nature of rights asserted by the parties before this Court and the Court's limited jurisdiction on merits, in exercise of power conferred under Article 226 of the Constitution of India, this Court issues the following directions:

- (a) Shakespeare Sarani Police Station shall forthwith put up a padlock on the said premises and seal the same and retain possession thereof.
- (b) The Debts Recovery Tribunal-II and/or Tribunal-in-charge, Kolkata is hereby directed to take up the tenant's application being S.A. No. 89 of 2011 immediately upon receipt of a copy of this order and dispose of the same within a period of three weeks mandatorily and positively.
- (c) The inter se rights of the Bank vis-à-vis the alleged tenant i.e. M/s. Mirador Commercial Pvt. Ltd., shall be decided by the Tribunal in accordance with law.
- (d) Possession of the secured assets with the Shakespeare Sarani Police Station shall abide by any order that may be passed by the Debts Recovery

Tribunal-II, Kolkata in terms of the directions made hereinabove.

It is made absolutely clear that this Court has not entered into the rival contentions of the State Bank of India and the private respondent, namely, M/s. Mirador Commercial Pvt. Ltd. and the Debts Recovery Tribunal-II, Kolkata shall proceed to deal with the matter in accordance with law uninfluenced by the observations made herein.

With the aforesaid directions, the instant writ petition shall stand disposed of.

There will be no order as to costs.

Mr. Banerjee prays for stay of operation of the aforesaid order. The same is considered and refused.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)