

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2698 of 2021

**IDFC First Bank Limited
Vs.
Narendra Kumar Sharma & Ors.**

For the Petitioner : Mr. Saptansu Basu
: Mr. Tanmay Mukherjee
: Mr. S. Bhattacharya

For the State : Mr. Sudip Ghosh
: Mr. Bitasok Banerjee

Heard on: : 22.02.2022

Judgment on : : 22.02.2022

Jay Sengupta, J.:

This is an application challenging an order dated 01.12.2021 passed by the learned Chief Judicial Magistrate, Howrah in Misc. Case No. 573 of 2021 purportedly under in exercise of powers under

Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act, for short).

Leave is granted to add the State of West Bengal as an opposite party.

Learned senior counsel appearing on behalf of the petitioner submits as follows. The petitioner is aggrieved with an order passed by the learned Chief Judicial Magistrate transferring the application to a learned Judicial Magistrate for disposal. Relying on a decision of the Hon'ble Apex Court in AIR 2007 SC 712, it is submitted that while acting under Section 14 of the said Act, it is not required to give notice either to the borrower or to the third parties. Therefore, even in the case of this revision, no notice need be given to the borrower or the third parties. The learned Chief Judicial Magistrate has exercised powers under Section 15 (2) of the Code of Criminal Procedure in passing such order. That is why a revisional application has been preferred in the criminal side. Otherwise, the matter could have been moved before a writ Court. The learned Chief Judicial Magistrate could not have delegated such power to anyone else.

Learned counsel appearing on behalf of the State submits that the revisional application is not maintainable in the criminal side as the order impugned was not passed in exercise of powers conferred

on the learned Chief Judicial Magistrate under the Code of Criminal Procedure.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the revision petition.

First, there is no indication in the impugned order that it was passed by the learned Chief Judicial Magistrate while acting as a criminal Court.

Secondly, Section 15 (2) of the Code only empowers the learned Chief Judicial Magistrate either to make rules or give special orders as to the distribution of business among Judicial Magistrate subordinate to him. However, in the present case, no such power has been exercised. Only a matter has been delegated to a learned Judicial Magistrate for disposal.

Therefore, the impugned order was not passed by the learned Chief Judicial Magistrate sitting as a Criminal Court. Rather, it is passed as a delegate for discharge of an administrative function under the SARFESI Act.

In view of the above, I find that no criminal revision is maintainable against the impugned order passed by the learned Chief Judicial Magistrate.

If the order passed by the learned Chief Judicial Magistrate is

not amenable to the criminal jurisdiction of this Court, then it would be futile to decide whether such a matter under Section 14 of the SARFAESI Act could be sent to a subordinate Magistrate in terms of Sub-Section (1A) of Section 14 of the said Act.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Furthermore, this order shall not come in the way of the petitioner in challenging the impugned order before an appropriate forum.

On the prayer of the learned advocate on record of the petitioner, the Office is directed to return the certified copy of the order annexed with the revision petition to the learned advocate on record of the petitioner upon furnishing usual undertakings and on supplying a copy of the same for the record.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)