

16.09.2022

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Sl. No. 01

Ct. No. 05

Suppl. List

WPA 21577 of 2022

Mr. Harish Agarwal

-Versus-

The Authorized Officer, Yes Bank Ltd. & Ors.

Mr. Pratik Dhar

Ms. Deblina Lahiri

Mr. Mrinmoy Chatterjee

..... for the petitioner

Mr. Siddhartha Banerjee

Mr. Sayak Ranjan Ganguly

Ms. Jyoti Rauth

.....for the respondent

The petitioner prays for urgent relief against an order dated 31.05.2022 passed by the Chief Judicial Magistrate under Section 14 of the Securitisation Act, 2002. The petitioner had moved an earlier writ petition on 9th September, 2022 and on the plea that an application pending before DRT-III may not be taken up before the Bank takes action. By an order dated 9th September, 2022, the petitioner was given leave to go before the assigned Bench before the DRT and take all requisite steps. The application of the petitioner filed under the relevant provisions of the 2002 Act was already pending at the time when the writ petition was moved on 9th September, 2022.

An order was passed by the Registrar of the concerned Department of the Government of India on

9th September, 2022 assigning the matters of DRT-I and DRT-III to the Presiding Officer of DRT-Cuttack Bench and the petitioner's matter was pending before DRT-III. The Bank in the meantime issued a communication on 13th September, 2022 stating that the Bank would proceed under the Act for taking possession of the property of the petitioner today, i.e., 16th September, 2022. In the meantime, the petitioner's matter was listed as item No. 2 before DRT-Cuttack Bench. This Court has been informed that after waiting till about 3 p.m., the petitioner was informed that the Bench would not be sitting. The Bench has also not sat today, i.e., 16th September, 2022.

The facts indicate the urgency of moving the present writ petition.

The respondent Bank is represented. Learned counsel takes a point that the petitioner is seeking interim protection from the Writ Court despite being outside the time limit fixed under Section 17 of the Act. Counsel submits on instructions that the Bank has already taken possession of the petitioner's property.

This is disputed on behalf of the petitioner.

Upon perusing the documents, this appears to be a penitential case where litigant is unable to take recourse to an efficacious alternative statutory remedy provided to the litigant under the specific Act by reason

of the forum not being available for adjudicating the dispute for some reason or the other. The unfortunate conclusion is that although the respondent Bank has proceeded to act in terms of the communication dated 13th September, 2022 by taking steps in terms of the said Notice, the statutory forum remains unavailable to the petitioner and there is no indication as to when the petitioner would be able to contest the action of the Bank. It may also be said that by the time the petitioner is able to urge its case before the DRT-Cuttack Bench, or any other Bench to which the petitioner's matter is assigned, the proceedings before the DRT may itself become infructuous.

Hence, considering the above facts, this Court is of the view that the petitioner is entitled to a limited interim protection. The Bank is restrained from taking any further steps in terms of the communication dated 13th September, 2022 until 26th September, 2022 on the hope that the petitioner would get a hearing in one of the Benches of the DRT.

It is made clear that this Court has not gone into the merits of the case but was constrained to intervene by reason of the sheer lack of remedy available to the petitioner despite the provisions under the 2002 Act.

WPA 21577 of 2022 is disposed of in terms of the above.

Parties shall be at liberty of communicating the order as dictated in the Court.

(Moushumi Bhattacharya, J.)