

24.11.2022

**MAT 1843 of 2022
With
CAN 1 of 2022**

**Bank of Baroda & Anr.
Vs.
Samir Kumar Kundu & Ors.**

Mr. Anindya Lahir
Mr. Rahul Sarkar
Ms. Dipika Sarkar
Mr. Siddhant Srivastava

... ... for the appellants

Affidavit of service filed by the appellants is taken on record.

The appellants is aggrieved with part of the order of the learned Single Judge dated 15th November, 2022 passed in WPA 18208 of 2022 whereby the police has been directed to produce appellant no.2 in Court being the authorized officer of Bank of Baroda.

Learned counsel for the appellants has pointed out that the respondent nos.6 and 7 were the borrower who had committed default. Therefore, in the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act auction had taken place and the respondent no.1 (writ petitioner) was the auction purchaser who was put in possession of the property in question. Thereafter, he was allegedly dispossessed by the respondent nos.6 and 7. Therefore, the writ petition was filed. He has submitted that the writ petition was earlier listed on 10th November, 2022 whereby the bank was directed to depute the authorised

officer who had delivered the physical possession of the property to the writ petitioner before the Court on the adjourned date. The adjourned date was 14th November, 2022.

It is further submitted that on 14th November, 2022 the advocate for the bank had sought for adjournment and there was a lapse on the part of the advocate in communicating the proceedings to the appellants. Therefore, the appellant no.2 was not aware of the fact that he had to appear before the Court on 15th November, 2022. Hence he could not appear on that date.

Learned counsel for the appellants has further submitted that the appellant no.2 has no difficulty in appearing before the learned Single Judge on 25th November, 2022 at 10.30 a.m. but the appellant no.2 is a senior officer who is on the verge of his retirement, therefore the direction to the police to produce him in the Court will cause humiliation.

Learned counsel for the appellants has also drawn the attention of this Court to paragraph 21 of the CAN 1 of 2022 wherein the appellant no.2 has given an undertaking that he would personally remain present before the learned Single Judge on the next date to assist the Court.

Having regard to the circumstances which have been pointed out by the learned counsel for the appellants and considering the fact that the appellant

no.2 has undertaken to appear before the learned Single Judge himself on the adjourned date, i.e. 25th November, 2022 at 10.30 a.m., we find that there is no need to give effect to the direction of the learned Single Judge to Bidhannagar Police Station to produce the appellant no.2 on the next date.

Hence, we direct accordingly.

However, we make it clear that if the appellant no.2 does not appear before the learned Single Judge in accordance with the undertaking given before this Court on 25th November, 2022 at 10.30 a.m. then not only he will be exposing himself to the action for breach of undertaken but learned Single Judge will also be at liberty to pass appropriate orders against him.

Appeal is accordingly disposed of.

Connected application is also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)