Ct. 05
Item No.06
30.11.2022
(Suvendu)

WPA 26096 of 2022

Sobhik Bhar
Vs.
Punjab & Sind Bank & Ors.

Mr. Rajarshi Dutta
Mr. Sujit Banerjee
……………for the petitioner
Mr. Ramesh Ch. Prusti
Ms. Soumi Gupta
………for the Respondent nos. 1 & 2
Mrs. Swati Agarwal
Mr. Arjun Mukherjee
……….for the respondent no.6

The affidavit-of-service is taken on record.

The petitioner seeks stay of a Sale Notice of the property-in-question at the behest of the respondent -Bank.

The petitioner seeks to come within the ambit of Article 226 of the Constitution of India by pressing reliance on Paragraph 51 of *Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors.*, *(2004) 4 Supreme Court Cases 311*. The petitioner claims that no security interest, as defined under Section 2(zf) of the SARFAESI Act, 2002, could have been created in favour of the respondent Bank when the respondent no. 6 (the petitioner's uncle) and the petitioner hold $1/6^{th}$ share of the residential property which is the subject matter of the impugned Sale Notice.

The petitioner, through learned counsel, alleges fraud and persuades the Court to intervene in the matter.

Learned counsel appearing for the Bank relies on a pleading in the writ petition which shows that the petitioner has knowledge of applications filed by the Bank in the DRT as of November, 2021 and further that the Bank has proceeded to act in terms of a mortgage created by the respondent no. 6 in favour of the Bank.

Upon hearing learned counsel, this Court is not inclined to interfere with the impugned Sale Notice not only by reason of the settled law as pronounced by the Supreme Court but also by reason of fact that the petitioner is entitled to approach the statutory forum available to the petitioner under Section 17(1) of the SARFAESI Act, 2002 which is a complete and adequate statutory remedy available in the present facts. The petitioner may very well take all arguments as taken before this Court in the application before the Debts Recovery Tribunal.

However, since the stated position in the writ petition is that the petitioner only came to know of the impugned Sale Notice on 22nd

November, 2022 and the sale is scheduled to be held at 2 p.m. today i.e. 30th November, 2022, the respondent Bank shall not give any effect to the result of the sale until the petitioner moves the DRT which shall not be later than 2nd December, 2022. The petitioner shall be at liberty of seeking appropriate urgent relief from the DRT and the DRT is expected to consider the same.

WPA 26096 of 2022 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(**Moushumi Bhattacharya, J.**)