

ORDER SHEET

WPO/2332/2022

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

GOODLUCK HOSIERY MILLS PVT. LTD. AND ANR.
VERSUS
THE PRESIDING OFFICER, DEBT RECOVERY TRIBUNAL,
KOLKATA AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : July 11, 2022.

Appearance:

Mr. Gautam Mitra, Adv.

Mr. Rishad Medora, Adv.

Mr. Meghajit Mukherjee, Adv.

Ms. Sweta Mohanty, Adv.

Ms. Priyanka Sharma, Adv.

Ms. Soni Ojha, Adv.

Ms. Sambrita B. Chatterjee, Adv.

The Court: The petitioners seek relief against a notice of possession dated 13th June, 2022 passed by the District Magistrate, South 24 Parganas. According to the case made out by the petitioners, the said notice of possession was received by the petitioners on 5th July, 2022 and the petitioners immediately approached the DRT III on 7th July, 2022.

Learned counsel appearing for the petitioners submits that the DRT III is currently not functioning due to continuing cease work by the lawyers. Counsel also submits that the notice of possession and an earlier notice under Section 13(2) of the SARFAESI Act, 2002 issued to the petitioners in 2020 was obtained by suppression since the petitioners have substantially paid the dues to the Bank and only an amount of Rs.99 lakhs or less remains outstanding.

Learned counsel appearing for the Home Finance Company takes a point of maintainability. It is also submitted that the petitioners failed to

take steps against the earlier notice under Section 13(2), which was issued to the petitioners in 2020.

After hearing learned counsel, the point is whether the petitioners should have a proper opportunity of representing their case before the DRT III, which is not presently functioning.

The notice was received by the petitioners on 5th July, 2022 and the petitioners thereafter immediately approached the DRT III with a prayer for stay of the notice of possession. The ground taken of the alternative remedy available to the petitioners is hence not really an option for the petitioners since the alternative statutory forum is not working. Further, under Section 17-A(2) of the Recovery of Debts and Bankruptcy Act, 1993, although the Appellate Tribunal has the power to transfer a case from one DRT to the other, it is not an absolute obligation to be explored by the petitioners where they are facing an imminent threat of being dispossessed and require urgent relief.

WPO/2332/2022 is accordingly disposed of with a limited interim relief to the petitioners. The Home Finance Company shall be restrained from acting in terms of the notice of possession dated 13th June, 2022 until after one week from the date on which the cease work before DRT III is resolved.

(MOUSHUMI BHATTACHARYA, J.)