

31st July,
2023
(AK)
08

W.P.A 1203 of 2021

Fit N Fine Body Care Services Private Limited and another
Vs.
The State of West Bengal and others

Mr. Aniruddha Chatterjee
Mr. Saptarshi Kumar Dhal
...for the petitioners.

Mr. Debnarayan Banerjee
...for the State.

Mr. Dipankar Das
...for the respondent nos. 5 & 6.

Learned senior counsel appearing for the petitioners challenges an order passed by the District Magistrate, South 24 Parganas, purportedly under section 14 of the SARFAESI Act, 2002.

At the outset, learned counsel places reliance on a printout from the official website of the District Courts of India, indicating that the Shakespeare Sarani Police Station, within the territorial ambit of which the property-in-question (secured asset) is situated, falls within the territorial jurisdiction of the Chief Metropolitan Magistrate, Kolkata and not the District Magistrate, South 24 Parganas.

Since the petitioners had no opportunity to take any objection relating to territorial jurisdiction, as they were

not heard by the Magistrate, the stipulation of law to take such ground at the earliest possible opportunity is not applicable.

Heard learned counsel for the parties.

The petitioners are justified in arguing that the District Magistrate, South 24 Parganas did not have the territorial jurisdiction, within the contemplation of Section 14 of the SARFAESI Act, 2002, to pass the impugned order pertaining to the property at Shakespeare Sarani Kolkata-700016, lying within the jurisdiction of the Shakespeare Sarani Police Station.

Section 14 of the 2002 Act clearly stipulates that, for the purpose of taking possession or control of any secured asset, the necessary request is to be made in writing to the Chief Metropolitan Magistrate or the District Magistrate “within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found”.

Hence, applying the language of Section 14, the present exercise of jurisdiction by the District Magistrate was palpably *de hors* the law due to lack of territorial jurisdiction.

Accordingly, WPA 1203 of 2021 is allowed, thereby setting aside the impugned order dated February 20, 2020 passed by the District Magistrate, District-South 24 Parganas.

The respondent-Bank is given liberty to file an appropriate application under Section 14 of the SARFAESI Act, 2002 within a week from date before the competent court of District Magistrate having jurisdiction to take up the matter.

Until any appropriate order is passed with regard to the secured assets in the said proceeding, if initiated before the competent forum by the Bank, the respondent-Bank shall maintain status-quo with regard to the secured asset involved in the present case.

However, in the event the respondent-Bank does not file an application within a week from date as per the liberty given above, the respondent-Bank shall be bound to hand over the possession of the secured assets at Shakespeare Sarani, acquired through its Authorized Officer pursuant to the order impugned herein, to the petitioner and/or the petitioners' authorized representative, positively within three days from the expiry of the said period of one week from date.

All observations made herein and the directions passed in the present order, needless to say, shall be subject to any order which may be passed by the competent District Magistrate and/or the tribunal, whichever has jurisdiction, as applicable.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)