07.02.2023
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WPA 1054 of 2023

Ranjit Kumar Maji & Ors.
-Vs-
Union of India & Ors.

Mr. Dilip Kumar Samanta,
Mr. Ashish Pal,
Mr. Biswapriya Samanta,
.... for the petitioners

Ms. Hasi Saha
... for the respondent no. 1

Mr. Amal Kumar Sen,
Mr. Lalmohan Basu
... for the State

Mr. Debashis Saha,
Mr. Moniruzzaman
... for the State Bank of India

The petitioners pray for setting aside of a communication dated 3rd January, 2023 of the respondent no. 5, State Bank of India, Stressed Assets Recovery Branch. The ground of challenge is that the Bank has taken physical possession of the residential house of the petitioners situated at Kotulpur, Bankura without due recourse to the relevant statute.

Learned counsel for the petitioners places a Panchanama under Rule 4(1) of The Security Interest (Enforcement) Rules, 2002 to The SARFAESI Act, 2002 and submits that under Rule 4, the Bank can only take possession of moveable property under the measures specified in Section 13(4) of the Act. Counsel submits that the Bank has not acted in the manner which the Act and the Rules prescribe and hence, the entire act of taking possession should be nullified and held to be without jurisdiction.

Learned counsel appearing for the Bank places a document to show that the physical possession of the petitioners' house (secured asset) was taken pursuant to an order passed by the District Magistrate, Bankura on 10th March, 2022. Counsel submits that the petitioners did not challenge the said order and instead approached the Writ Court in January, 2023 for urgent orders.

The admitted facts, which would appear from the material placed before the Court, are that the District Magistrate passed an order on 10th March, 2022 in relation to 9.086 decimals of land with a two storied building and directed the Sub-Divisional Officer, Bishnupur to make necessary arrangement for taking over possession of the secured assets of the borrowers who are the petitioners before this Court. The physical possession of the immovable property described as secured immovable property in a Certificate of Possession dated 7th January, 2023 was taken over by the Executive Magistrate on that date. The petitioners have admittedly not challenged the order of the District Magistrate or the consequent possession of the petitioners' immovable asset.

The contention with regard to the Bank not taking over the physical possession of the secured asset in compliance with Rule 4 of the Security Interest (Enforcement) Rules, 2002 is also not acceptable since the Panchanama annexed to the writ petition clearly states that the Bank acted in exercise of Section 13(4) of the Act and took over the possession of the secured assets of the borrowers consequent to a Demand Notice dated 21st October, 2021. Rule 4(1) provides for the authorized officer of the secured creditor to take possession of moveable property in the presence of two witnesses after drawing up a Panchanama as far as possible as provided in Appendix- I to the Rules. The Bank hence drew up the Panchanama under Rule 4(1) of the 2002 Rules. It is also the stated position of the Bank that the moveable assets of the petitioners do not form part of the secured asset and that the Bank is not interested in holding on to the said moveable assets.

The Bank has also placed a document of 7th January, 2023 which contains the signatures of the petitioners for making an inventory of the moveable assets at the time of taking possession of their immovable secured asset.

The above facts persuade this Court to hold that the Bank did not cause any infraction of the Act or the Rules in taking possession of the secured asset. The secured asset was taken possession of much earlier in March, 2022 which action has not been challenged till date.

WPA 1054 of 2023 is accordingly disposed of by granting liberty to the petitioners to remove all the moveable assets within the secured asset (house) as mentioned in the Inventory in the presence of the representative of the Bank and within one week from today, if the petitioners are inclined to do so.

This order shall not preclude the petitioners from seeking appropriate relief before the Court or any other forum in accordance with law.

(**Moushumi Bhattacharya, J.)**