

22 18.01.2023

gd/ssd

MAT/68/2023
IA NO: CAN/1/2023, CAN/2/2023
M/S DIAMOND HOSPITAL PRIVATE LIMITED AND ANR.
VS
LIC HOUSING FINANCE LTD. AND ORS.

Mr. Saptangshu Basu,
Mr. Chittapriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha
..for the Appellants.

Mr. Biswaroop Bhattacharya,
Mr. Debabrata Das,
Mr. Arunabha Sarkar
..for the Respondent Nos.1 and.

This appeal is directed against the order of the learned Single Judge dated 10th January, 2023 whereby WPA 25188 of 2022 has been disposed of with certain directions.

The appellants were not parties in WPA 25188 of 2022, therefore, CAN 2 of 2023 has been filed by the appellants seeking leave to file this appeal.

Having regard to the fact that the appellants are the borrowers and the action under the provisions of the SARFAESI Act was taken against the appellants and the order under Section 14 of the Act was passed by the District Magistrate and in WPA 25188 of 2022 the respondents (writ petitioners) were seeking direction to the police authorities to take appropriate steps for

handing over the possession of the secured assets in pursuance to the order of the District Magistrate and the requisite directions have been issued by the learned Single Judge, we are of the opinion that the appellants are directly affected by the order under challenge, therefore, leave is granted to file the appeal.

Accordingly CAN 2 of 2023 is allowed.

The appeal is heard with consent.

The respondent no.1/financial institution had filed WPA 25188 of 2022 with the plea that the appellants were extended the financial assistance to the tune of Rs.9 crores and 10 lakhs by the respondents and the appellants had committed default in timely payment of the instalments, therefore, proceedings under the SARFAESI Act were initiated by issuance of notice under Section 13(2) of the Act on 8th October, 2022. Thereafter the matter further proceeded under the SARFAESI Act and the respondents had taken symbolic possession of the secured assets on 19th December, 2020 under Section 13(4) of the Act. The District Magistrate had subsequently passed the order dated 5th August, 2021 under Section 14 of the SARFAESI Act and the respondent no.1/financial institution had submitted the representations to the police authorities dated 29th April, 2022 and 22nd June, 2022 to render assistance for taking possession of the

secured assets in terms of the order under Section 14 of the SARFAESI Act and being aggrieved with the inaction on their part, the writ petition was filed.

Learned Single Judge by the impugned order has directed the Commissioner of Police, Asansol Durgapur Police Commissionerate and Andal Police Station to deploy sufficient force to deliver the secured assets to the respondent no.1/financial institution on 19th January, 2023 at 2 p.m.

The submission of learned counsel for the appellants is that S.A. No.101 of 2021 at the instance of the appellants is already pending before the DRT-II, Kolkata wherein the proceedings taken under the SARFAESI Act are under challenge and the DRT had also extended interim protection to the appellants which continued upto 15th March, 2022. But thereafter since the Presiding Officer was not available, therefore, the interim protection has not been continued and SA has not been heard and this fact was not brought to the notice of the learned Single Judge.

Learned counsel for the respondents has opposed the appeal by referring to the correspondence between the parties relating to OTS and has submitted that no concrete proposal for OTS has been submitted by the appellants and that as on date a sum of about Rs.13 crores is due and payable by the appellants and the

appellants had no right of hearing before the District Magistrate. He has further submitted that even if the order under Section 14 of the SARFAESI Act is given effect to, the appellants will have a right of restoration of possession in terms of Section 17(3)(b) of the SARFAESI Act if they succeed.

We have heard the learned counsel for the parties.

It is undisputed that the appellants are running a hospital in the premises in question. The DRT while passing the interim order dated 22nd September, 2021 in S.A. No.101 of 2021 had taken a note of the fact that the appellants are running hospital with the considerable number of doctors, para medical and other staff and that the hospital was made designated centre for Covid-19 patients of the State Government and was rendering valuable service to the neighbourhood in particular and rest of the population. Therefore, taking into account these relevant facts, the appellants were permitted by the DRT to approach the respondent no.1/financial institution with upfront of amount of Rs.50 lakhs and a direction was issued to the respondent no.1/financial institution to give 15 days' notice to the appellants before giving effect to the order of the District Magistrate. The DRT by the subsequent order dated 3rd November, 2022 had extended the interim protection by directing the respondents not to

take any coercive measure till the next date. The order was continued. By order dated 7th March, 2021 it was further extended upto 15th March, 2022. It has been pointed out that thereafter the matter was taken up on 15th March, 2022 and subsequently on account of non-availability of the Presiding Officer, the pending SA could not be heard.

Having regard to the fact that the very proceedings under the SARFAESI Act are under challenge before the DRT and now it has been pointed out that the Presiding Officer at DRT, Siliguri is hearing the matter concerning Kolkata DRT-II, we are of the opinion that the pending SA of the appellants needs to be decided at the earliest.

Learned counsel for the appellants has submitted that the appellants are ready to deposit Rs.2 crores in the meanwhile within seven days and the appellants be protected till the SA is heard.

In the aforesaid circumstances, we dispose of the appeal by directing the DRT-II, Kolkata to decide pending S.A. No.101 of 2021 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. On deposit of Rs.2 crores by the appellants with the respondent no.1/financial institution within a period of one week from today, the order of the learned Single Judge will

not be given effect to and the same will be subject to the final outcome of S.A. No.101 of 2021.

We make it clear that if the amount of Rs.2 crores is not deposited within a period of one week from today, then the order of the learned Single Judge will become operative with effect from 27th of January, 2023. The deposit of the above amount is without prejudice to the rights and contentions of the parties in the pending SA.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

