4th July, 2023
(AK)
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W.P.A 2114 of 2023

Uttam Kumar Ghosh and others
Vs.
Paschim Banga Gramin Bank and others

Mr. Pratip Mukherjee
Mr. Samrat Choudhury
...for the petitioners.

Mr. Baidurya Ghosal
...for the respondent nos.1 to 4.

Mr. Suddhadev Mondal Adak
...for the respondent nos.5 & 6.

Affidavit-of-service filed today be kept on record.

Learned counsel for the petitioners contends that the petitioners have entered into a development agreement with the private respondents. Pursuant to the said agreement, the petitioners are the joint owners of a major portion of the property.

Even without the petitioners being liable to pay anything to the bank in any manner whatsoever, apparently the developer entered into a mortgage with the Bank, depositing the title deeds as security for a loan.

However, it is clarified that the petitioners have not got any intimation regarding any such proceeding.

All on a sudden, the petitioners came to know that an order has been passed under Section 14 of the

SARFAESI Act, 2002 in respect of the property, of which the petitioners are the owners.

It is argued that although the petitioners were never borrowers from the respondent-Bank, nor were the properties given in mortgage by the petitioners at any point of time, the possession thereof is being sought to be taken by the Bank through the tribunal.

It is further argued that the regular tribunal is not functioning and, as such, the petitioners were constrained to move this court with the present writ application.

Learned counsel for the private respondents/developers seeks a fortnight's adjournment.

However, it is submitted by learned counsel for the developers as well that the concerned bench of the tribunal is not functioning regularly.

Such contention is controverted by learned counsel for the bank, who argues that the tribunal is fully functional at present.

Be that as it may, since it transpires that the petitioners have been able to show at least a semblance of a right in the property and there is nothing on record to indicate that the petitioners had ever taken any loan from the respondent-Bank, even without going into the merits of the matter, the petitioners deserve an interim protection till they move the concerned tribunal with the issues as raised in the present writ petition.

Accordingly, WPA No. 2114 of 2023 is disposed of by granting liberty to the petitioners to approach the concerned tribunal with a proper application under Section 17 of the SARFAESI Act, 2002 and, if necessary, to make an application pleading the urgency and asking the tribunal to take up their application on an urgent basis.

Such application shall be made by the petitioners within a week from date.

However, for abundant caution, the respondents shall remain restrained from disturbing the possession of the petitioners in any manner with regard to the disputed property till one month from date or until further order passed by the tribunal, whichever is earlier.

It is made clear, however, that the merits of the matter have not been gone into by this court, even on a *prima facie* footing, and the findings made above are entirely tentative in nature and the interim order is passed on *ad hoc* basis, subject to the adjudication by the tribunal.

Since no affidavits have been invited, it is deemed that none of the allegations made in the writ petition are admitted by any of the respondents.

It is made clear that in the event the petitioners do not make such application before the concerned tribunal within a week from date, this order shall automatically stand recalled, without further reference of the court, and it will be deemed that the writ petition has been disposed of only with the liberty to the petitioners to move the appropriate forum.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)