

02.03.2023
sayandeep
Sl. No. 15
Ct. No. 05

WPA 2240 of 2023

Aditya Birla finance Limited & Anr.
-Versus-
The Chief Judicial Magistrate, Barasat

Mr. Sagar Bandhapadhyay
Mr. Soumava Mukherjee
Ms. Sudeshna Mazumder

.....for the petitioners

Mr. Debasish Ghosh
Mr. Prantik Garai

.....for the State

The only question raised on behalf of the parties in the present writ petition is whether the Court can direct the Chief Judicial Magistrate, Barasat to act in terms of an application made by the petitioners before the CJM of 9th November, 2022 for taking physical possession of the secured assets and to hand over the same to the petitioners.

Learned counsel appearing for the petitioners relies on *Authorized Officer, Indian Bank vs. D. Visalakshi and Anr.*; (2019)20 SCC 47 to submit that the CJM would have the power under Section 14 to take steps as mandated under the said provision.

Learned counsel appearing for the State submits that the petitioners have not shown why the petitioners were constrained to approach the CJM despite the District Magistrate, Barasat being available.

Upon considering *D. Visalakshi*, it appears that the Supreme Court was of the view that the expression “DM” has not been defined in the SARFAESI Act, 2002 and concluded that the CJM is equally competent to deal with an application moved by a secured creditor under Section 14 of the Act. The Supreme Court overruled the Division Bench Judgment of this Court in *Andhra Bank & Ors. vs. Sri Dinesh Kumar Agarwal & Ors.*; (2013)4 CHN 95 on that basis.

WPA 2240 of 2023 is accordingly allowed and disposed of with a direction on the learned Chief Judicial Magistrate, Barasat to decide and dispose of the application within the time frame as provided under Section 14(1)(9) first and second proviso. Since the period envisaged therein has already expired, the application shall be disposed of within 30 days from the date of communication of this order.

(Moushumi Bhattacharya, J.)