

02.03.2023

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Sl. No. 17

Ct. No. 05

WPA 3425 of 2023

Dipak Kumar Giri

-Versus-

Canara Bank & Ors.

Mr. Nimish Mishra

Mr. Suddhastva Banerjee

Mr. Rittick Chowdhury

Mr. Biswajit Mal

.....for the petitioner

Mr. J. Brahmachari

Mr. Uttam Kr. Bhattacharjee

Mr. Amit Gupta

.....for the respondent Nos. 1 & 2

The petitioner seeks to assail an order passed by the Presiding Officer, DRT-II on 25th January, 2023. The ground of challenge is that DRT-II did not consider the factual submission made by the petitioner with regard to receiving the order of the District Magistrate on 07.12.2022.

Learned counsel appearing for the petitioner submits that the petitioner had tried to make out a case of the petitioner receiving the order of the District Magistrate dated 3rd March, 2022 only on 7th December, 2022 but this was not given credence by the Presiding Officer. Counsel seeks to rely on a Judgment delivered by this Court on 24th November, 2022 in *M/s Deekon India Pvt. Ltd & ors. vs. Canara Bank & Ors.*

The facts in the present matter are that the District Magistrate passed the order under Section 14 of the SARFAESI Act, 2002 on 3rd March, 2022. The petitioner says that the petitioner received this order on 7th December, 2022. The order of the District Magistrate however names petitioner/borrower as one of the persons to whom the order was sent on 3rd March, 2022 itself for necessary action. The document relied upon by the petitioner being an application for information under the RTI Act, 2005 made on 22nd March, 2022 does not assist the petitioner in conclusively disproving the fact that the petitioner was one of the addressee of the order of the District Magistrate.

The facts in *M/s Deekon India Pvt. Ltd.* were different. In that case, the parties before the Court have simply been sent to the DRT for seeking appropriate redress. The petitioner in the present case has already been heard by the particular DRT and an order has been passed upon a contested hearing. The Presiding Officer has come to a clear finding of the petitioner being barred under Section 17 (1) of the SARFAESI Act, 2002 for being out of time. The petitioner hence cannot plead violation of the principles of natural justice.

The petitioner may have the forum available to him for seeking redress against the impugned order dated 25th January, 2023; the writ Court however is not that forum.

WPA 3425 of 2023 is accordingly disposed of in terms of the above.

(Moushumi Bhattacharya, J.)