

2 22.03.2023

gd/ssd

MAT/371/2023
IA NO: CAN/1/2023

INDU CHOUBEY
VS
ADITYA BIRLA HOUSING FINANCE
LIMITED AND ORS.

Mr. Sukanta Ghosh
..for the Appellant.

Mr. Avishek Guha,
Ms. Akansha Chopra,
Ms. Debarati Das
..for the Respondent Nos.1 and 2.

This intra court appeal is at the instance of the appellant (writ petitioner) challenging the order of the learned Single Judge dated 22.02.2023 whereby WPA 1456 of 2023 has been disposed of with certain directions.

The appellant had approached the Writ Court challenging the order dated 16th August, 2022 passed by the District Magistrate, South 24-Parganas under Section 14 of the SARFAESI Act.

The learned Single Judge has taken note of the fact that the appellant has the remedy before the DRT-III. The learned Single Judge also took note of the fact that the DRT-I and DRT-III had started functioning from 28th February, 2023, therefore, had disposed of the

petition with leave to the appellant to move the appropriate DRT by 3rd March, 2023 and protecting the appellant till then.

Submission of learned counsel for the appellant is that the DRT-III was not functioning and is still not functioning, therefore, the appellant does not have a remedy before the DRT and that the appellant had never mortgaged the property to the bank, therefore, she has been wrongly dispossessed by the order under Section 14 of the Act.

Learned counsel for the bank has informed that the DRT-III was functioning at the time when the order was passed as also as on today the additional charge of the DRT-III has been given to the other DRT Member. He further submits that the mortgage of the property was done by the lawful owner of the property.

We have heard the learned counsel for the parties and perused the record.

In view of the settled legal position, the proper remedy to challenge an order under Section 14 of the SARFAESI Act is to file an application under Section 17 before the DRT. It has been pointed out by learned counsel for the bank that another DRT was having the additional charge of DRT-III earlier and now by the notification dated 20th March, 2023 the charge of the DRT-III, Kolkata has been given to the DRT-I, Kolkata.

Learned Single Judge by the impugned order had given liberty to the appellant to move the appropriate DRT by 3rd March, 2023. No steps have been taken by the learned counsel for the appellant after the order of the learned Single Judge to move the DRT concerned. It has been submitted that a SARFAESI application was already filed after filing the writ petition. If such an application is pending, then the appellant has the remedy to move to the concerned DRT for urgent hearing of the said application.

Learned counsel for the bank has pointed out that the e-auction proceedings have failed and that there is no further steps till now for auction of the property.

It is also not in dispute that the order passed under Section 14 of the Act has already been implemented.

In the above circumstances of the case, we find no reason to take a different view than the one which has been taken by the learned Single Judge in the impugned order. However, we extend the limited protection granted by the learned Single Judge upto 7th April, 2023. If the appellant files any application for urgent hearing before the concerned DRT, then considering the nature of controversy involved in the matter, the DRT is expected to consider the prayer of the appellant expeditiously.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rai Chattopadhyay, J.)

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