

22nd March, 2023
(D/L No.22)
(SKB)

W.P.A. 5970 of 2023

Ujjwal Chowdhury
Versus
The Authorised Officer and another

Mr. Kishore Datta,
Mr. Dipanjan Datta,
Mr. Subhajit Chowdhury,
... for the petitioner.

Mr. Rudra Jyoti Bhattacharjee
... for the Bank.

The facts in the present case in brief are as follows:

An order was passed by the District Magistrate, Paschim Burdwan on 10th February, 2023. The petitioner moved an appropriate application before the DRT on 28th February, 2023. The petitioner has also impugned a Sale Notice of 3rd March, 2023 which the petitioner again challenged before the DRT on 6th March, 2023. The sale has been scheduled on 24th March, 2023.

The petitioner, through learned counsel, complains that despite the petitioner taking due steps before the statutory forum available to him under the SARFAESI Act, 2002, the Presiding Officer of DRT-II has not been sitting despite a Notification dated 20th March,

2023. Counsel submits that the DRT-II will not sit till 24th March, 2023 which is the date for sale of the petitioner's properties.

The Bank is represented.

Learned counsel appearing for the Bank was unable to effectuate an earlier sale and seeks to proceed with the present sale which is due to be held on 24th March, 2023. Without going into the merits of the matter, which the court cannot, in any event, the petitioner cannot be non-suited or prevented from getting adjudication in the pending application. The petitioner also cannot be deprived of a forum since the petitioner has challenged the impugned order of the District Magistrate as well as the Sale Notice. The petitioner must be given an opportunity to have the matter heard and decided by the statutory forum available to him.

On the submission made on behalf of the petitioner that the DRT-II will not sit till 24th March, 2023, which is the scheduled date for sale, the Bank is restrained from taking any steps pursuant to the impugned Sale Notice of 3rd March, 2023 till 1st week after DRT-II sits and starts hearing matters.

W.P.A.5970 of 2023 is disposed of in terms of the above.

After the order was dictated, learned counsel appearing for the petitioner submits that the District Magistrate's Subordinate Officers and police came to the petitioner's house to take possession and have also started the process of dislodging the petitioner from his residence. Counsel further submits that the matter could have been decided yesterday but the court awaited on the request of counsel appearing for the Bank who prayed for time to file the Vakalatnama. This is most unfortunate state of affairs. It is made clear that in the event the Bank or the District Magistrate has proceeded to take any steps to commence the act of dispossession or giving effect to the District Magistrate's order on impugned Sale Notice, such act shall be reversed and the petitioner shall be put into the position, the petitioner was as of 21st March, 2023.

(Moushumi Bhattacharya, J.)