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WPA 6024 of 2023

Kanak Polyfab (India) Pvt. Ltd. & Ors.
-Vs-
State Bank of India & Anr.

Mr. Siddhartha Banerjee,
Mr. Debashis Karmakar,
Mr. Arya Nandi
... for the petitioners

Mr. Om Narayan Rai,
Mr. Pankaj Kumar Mukherjee
... for the respondent Bank

The petitioners before this Court seek a restraint on the respondent Bank from taking steps pursuant to a Sale Notice dated 7th February, 2023 and a newspaper publication of 8th February, 2023. The notice and the publication relate to an auction of the petitioners' properties. The auction has been fixed today, i.e. 14th March, 2023.

The petitioners say that the petitioners challenged the Sale Notice of 7th February, 2023 before the Debts Recovery Tribunal-II on 9th March, 2023. The petitioners also filed an application on the same date before the DRT-II with reference to the impugned Sale Notice.

Learned counsel appearing for the respondent Bank submits that the petitioners were served with the impugned Notice of Sale on 10th February, 2023 and the petitioners failed to take any steps between 10th-28th February, 2023 when the charge of DRT-II ended. Counsel also refers to an earlier order of the DRT, which shows that the petitioners did not challenge the order of physical possession of the properties in favour of the respondent Bank. Counsel further submits that the physical possession of the properties was taken in 2022.

The petitioner's application before the DRT-II is before this Court. The prayer also shows that the application was filed challenging the Sale Notice of 7th February, 2023. The other application filed by the petitioners also contains a similar prayer.

Section 17(1) of the SARFAESI Act, 2002 gives 45 days to any person who seeks recourse against the steps taken by a secured creditor under Section 13(4) of the Act. In the present case, even if the date of the impugned Sale notice is taken to be the starting point as 7th February, 2023, 45 days would end on 24th March, 2023. The petitioners approached the DRT-II, which is the statutory forum available to the petitioners under the Act, on 9th March, 2023 well within the statutory window under Section 17(1) of the Act. The reason for the petitioners not taking any steps before

28th February, 2023 becomes academic since the petitioners have the limitation under the 2002 Act in their favour.

The more important point is whether once the petitioners have approached the statutory forum to avail of the statutory alternative remedy available to the petitioners, the respondent Bank can proceed to take steps which would in effect make the application infructuous. No litigant can be non-suited before the litigant has an opportunity to urge his case in fact and in law before a forum or the Court.

The proposal given on behalf of the respondent Bank for permitting the sale to continue and for the DRT to upend the sale at a later point of time is hence not acceptable.

The petitioners must have a chance to have the case adjudicated before the DRT. Unfortunately, the relevant documents show that the charge of the Siliguri Bench of DRT-II has not been extended beyond 28th February, 2023.

WPA 6024 of 2023 is accordingly disposed of with a direction on the respondent Bank not to take any steps in respect of the impugned Sale Notice of 7th February, 2023 or the paper publication of 8th February, 2023 until 4 days after the charge of DRT-II is given to different Bench. This order will not prevent the petitioners from seeking recourse under the statutory provisions for approaching the DRAT for appropriate assignment of the pending application.

(Moushumi Bhattacharya, J.)