

27.04.2023
sayandeep
Sl. No. 02
Ct. No. 05

WPA 6365 of 2023

Sanjeev Singh
-Versus-
Punjab National Bank & Anr.

Mr. Swarup Banerjee
Mr. Narayan Chandra Das
.....for the petitioner

Ms. Parna Roy Choudhury
Ms. Payel Ghosh
Mr. Avishek Chaudhury
.....for the PNB

The matter was heard yesterday, i.e., 26.04.2023 when learned counsel appearing for the parties placed the facts in the case. Since counsel appearing for the petitioner expressed a grievance that the decisions sought to be relied upon was not considered by the Court, the Court decided to list the matter today only to give counsel an opportunity to place the decisions.

The admitted fact before the Court is that the petitioner has challenged an order passed by the District Magistrate, 24-Parganas (North) on 19th December, 2022. Counsel is however unable to indicate the date when the petitioner received the impugned order but says that the order may have been received on 31st December, 2022.

The writ petition was filed on 14th March, 2023.

It is undisputed, as would further appear from the submissions of the counsel, that the petitioner filed

an application before the DRT in 2021. Significantly, the petitioner has not taken any steps before the DRT after receiving the impugned order dated 19th December, 2022.

It is well settled by several decisions of the Supreme Court that the High Court under Article 226 of the Constitution should not interfere when the petitioner has a statutory alternative remedy under the SARFAESI Act, 2002. This would include an application under Section 17(1) of the said Act.

The petitioner has chosen not to approach the statutory forum available to the petitioner and has instead come to the High Court invoking the power under Article 226 of the Constitution.

The unreported decision sought to be relied upon by counsel namely *Balkrishna Rama Tarle Dead Thr LRS Vs. Phoenix ARC Private Limited* is decidedly against the case of the petitioner since the Supreme Court held that the aggrieved party is to be relegated to the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, 2002. A recent decision of the Supreme Court dated 17th April, 2023 in *M/S. South Indian Bank Ltd. vs. Naveen Mathew Philip* considers the precedents in the matter and holds that the power conferred under Article 226 of the Constitution is to be exercised only in extraordinary circumstances.

WPA 6365 of 2023 is accordingly dismissed without any order as to costs.

Needless to say, the petitioner will have the liberty of approaching the DRT/statutory forum available to the petitioner for appropriate orders.

(Moushumi Bhattacharya, J.)