

13.04.2023
Item No.33
gd/ssd

MAT/566/2023
IA NO: CAN/1/2023

THE AUTHORISED OFFICER INDIAN BANK AND ANR.
VS
UJJWAL CHOWDHURY

Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal
..for the Appellants.

Mr. Dipanjan Datta,
Mr. Subhajit Chowdhury
..for the Respondent.

1. This intra court appeal by the Indian Bank being aggrieved by the order dated 22nd March, 2023 in WPA 5970 of 2023.
2. The writ petition was moved by the respondent borrower challenging the sale notice dated 3rd March, 2023 on the ground that though the sale notice was challenged before the Debt Recovery Tribunal since there was a vacancy in the Post of Presiding Officer of DRT-II, Kolkata, the matter could not be heard.
3. The learned Writ Court taking note of the said factual position directed that the appellant bank shall not proceed further pursuant to the sale notice dated 3rd March, 2023 till the first week after DRT sits and starts hearing matters, the appellant bank appears to be not seriously aggrieved over such

direction but is aggrieved over the other direction issued to the effect that the respondent/writ petitioner should be put in the possession he was as of 21st March, 2023.

4. It is submitted by the learned Advocate for the appellants that such an order could not have been passed by the learned Writ Court.

5. In our considered view, if the challenge to the sale notice could not be heard by the Debt Recovery Tribunal for reason not attributable to the borrower, then the appellant bank cannot take advantage of the situation and proceed to take possession of the property when the sale notice itself has been questioned.

6. That apart, the appellant bank was restrained from taking steps pursuant to the sale notice dated 3rd March, 2023. It is brought to the notice of the Court by the learned Advocate for the respondent/writ petitioner that as of now the Debt Recovery Tribunal No.II has commenced sitting and the application was taken up and on 31.03.2023 an order was passed noting that this appeal is pending before the Division Bench. Since the Debt Recovery Tribunal has already commenced its sitting, we are inclined to pass the following order by disposing of the appeal:

The Debt Recovery Tribunal shall take up the application filed by the respondent borrower and take a decision on merits and in accordance with law. Till any orders are passed either interim orders and final orders by the Tribunal at the instance of the appellant bank, the status quo with regard to the possession of the property of the respondent/writ petitioner prevailing as on 21st March, 2023 shall continue. The appellant bank is entitled to seek for appropriate interim orders before the Debt Recovery Tribunal with regard to this aspect.

7. The learned Advocate appearing for the appellant would vehemently contend that the Court should not interdict orders passed under Section 14 of the SAEFAESI Act.

8. This Court has not made any observations in this regard and it is only directed that status quo as on 21st March, 2023 to be maintained because of the observations and findings rendered by the learned Writ Court stating to the effect that the matter stood adjourn to 22nd March, 2023 on the ground that the Vakalatnama had to be filed by the learned counsel for the appellant bank and taking advantage of that situation the possession of the writ petitioner should not be affected. Therefore, it will be open to the appellant bank to canvass all points before the Debt Recovery Tribunal.

9. With the above observation, the appeal stands disposed of.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)