

27.07.2023
Item No.13
gd/ssd

MAT/847/2023
IA NO: CAN/1/2023
NIRMAL KANTI CHOWDHURY
VS
STATE BANK OF INDIA AND ORS.

Mr. Debashish Ghosh,
Mr. Abhishek Bose

... for the Appellant.

Mr. Sudeep Pal Choudhuri

... for the Respondent Bank.

1. We have heard learned counsel for either of the parties.

2. This intra court appeal is directed against the order dated 18.04.2023 in WPA 7941 of 2023 which was filed seeking for a declaration that the notice issued under Section 13(4) of the SARFAESI Act, 2002 is without jurisdiction.

3. The learned advocate for the appellant would vehemently contend that the appellant is a rightful owner of the property in question and he has not created a mortgage in favour of respondent State Bank of India.

4. The learned advocate for the respondent Bank submitted that a mortgage has been created by the developer and the mortgage is subsisting and suppressing the mortgage, sale has been effected to the appellant. In any event, as rightly held by the learned writ court, all these issues have to be agitated before

the appropriate forum under the provisions of the SARFAESI Act by resorting to the remedy available under Section 17(1) of the Act.

5. It is the submission of the learned advocate for the appellant that the bank should disclose the date on which the mortgage was created and if the mortgage is created after the petitioner has purchased the property for valid consideration and deed of conveyance was executed on 28th November, 2006, such a mortgage cannot be enforced by the respondent bank. This again is a factual question which can very well be agitated before the tribunal by resorting to an appellate remedy provided under the Act as it has been held that the SARFAESI Act is a Code by itself and the writ court should refrain from interfering with the measures initiated by the financing bank under the provisions of the SARFAESI Act.

6. For the above reasons, the appeal fails and the same is dismissed. The connected application stands disposed of accordingly.

7. However, we make it clear that we have not gone into the merits of the contentions raised by the appellant and it will be open to the appellant to canvass all points if an appeal is preferred before the tribunal under Section 17(1) of the Act.

8. After we have dictated this judgment, the learned advocate appearing for the appellant submitted

that in the event the appellant approaches the tribunal, the appeal should not be rejected on the ground of limitation.

9. We find that the writ petition was filed in March, 2019 and the same was dismissed on 18.04.2023 against which the present appeal has been filed and the present appeal has been dismissed by this judgment and order. Therefore, while computing the period of limitation when an appeal is filed before the tribunal, the period from 01.03.2019 till the receipt of the server copy of this order shall stand excluded.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)