

AD-09
Ct No.09
03.07.2023
TN

WPA No. 12042 of 2023
IA No: CAN 1 of 2023

Bijoy Chatterjee and another
Vs.
Bank of Baroda and others

Mr. U.S. Menon,
Mr. Abhirup Chakraborty
.... for the petitioners

Mr. Dipanjan Datta
.... for the Bank of Baroda

Learned counsel for the petitioners contends that the respondent-Bank has patently contravened law and natural justice in seeking to dispossess the petitioners, since the petitioners were in possession of the property since the year 2014, whereas the alleged debt, in respect of which the mortgage-in-question was created, was only of the year 2019.

It is submitted that even on the face of the records, it is palpable that the petitioners are in possession of the property-in-dispute, in the capacity of owners thereof.

For such purpose, learned counsel seeks to place reliance on the several documents annexed to the present writ petition. It is further submitted that

the Bank, without following due modalities of law, is seeking to dispossess the petitioners.

Learned counsel appearing for the Bank refutes such contentions and submits that the Bank took all due steps in accordance with law and, as such, the remedy of the petitioners lies before the concerned tribunal and/or any other competent civil court.

Heard learned counsel for the parties on the prayer of extension of interim order. It is seen from the records that although the petitioners have made out a *prima facie* case to go for trial, the trial which is required to decide the issues raised are only dependent on a detailed scrutiny of several documents, which are to be formally proved before a tribunal/court by the petitioners before being relied upon. Moreover, unless the said documents are proved and come on record in accordance with law, which is beyond the scope of a writ petition, the respondents would not have any meaningful scope of refuting the same on merits.

That apart, the question as to whether the respondent-Bank has complied with all formalities regarding the compliance of statute before reaching the stage of Section 14 of the SARFAESI Act, 2002 is entirely required to be gone into on facts by the appropriate tribunal. It would be premature and *de*

hors the jurisdiction of the writ court, at this juncture, to prejudge such issue merely on the basis of affidavits, since disputed questions of facts are involved.

Accordingly, WPA No. 12042 of 2023 is disposed of by granting liberty to the petitioners to approach the concerned tribunal with the disputes as raised in the present writ petition. If so approached, the tribunal shall decide the same in accordance with law, upon giving adequate opportunity of hearing to all concerned, as expeditiously as possible.

However, for the present, in order to grant an interim *ad hoc* protection to the petitioners till the petitioners get an opportunity to move any ad interim petition in connection with the challenge, if any, preferred by the petitioners before the tribunal, the interim order dated June 20, 2023 is extended, thereby restraining the respondent-authorities from taking any action on the basis of the order dated August 04, 2021 passed by the District Magistrate, South 24 Parganas and/or dispossessing the petitioners in any manner whatsoever till July 31, 2023 or until further orders, whichever is earlier, passed by the tribunal, if approached.

It is, however, made clear that the ad interim order passed herein is only on a preliminary and

tentative basis and shall not prejudice the rights and contentions of the parties before the tribunal, if approached by the petitioners. If so approached, the tribunal shall, while deciding the main application as well as all interlocutory matters, proceed without being unduly influenced in any manner whatsoever by any of the observations made herein and shall record its independent findings on law and fact.

Accordingly, IA No: CAN 1 of 2023 is also disposed of.

The parties, as well as all concerned, shall act on the server copy of this order without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)