

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P.A. No. 13983 of 2023

Aditya Birla Finance Limited & Anr.

Vs.

District Magistrate,  
North 24-parganas & Ors.

Mr. Sagar Bandhopadhyay,  
Mr. Saumava Mukherjee,  
...for the petitioners

Mr. Amal Kumar Sen,  
Mr. Lal Mohan Basu  
...for the State

Mr. Asis Bhattacharyya  
...for the private respondents

Learned counsel for the creditors/petitioners submits that despite the long pendency of a proceeding under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act of 2002) and the District Magistrate having passed an order under the said provision, no possession has yet been delivered to the petitioners through their authorised officer.

By placing reliance on the order passed under Section 14 of the Act of 2002, annexed at page 43 of the writ petition, learned counsel for the petitioners submits that the said order was passed as long back as on October 20, 2022 and almost a year has passed since then. As such, since the statute provides that a

proceeding under Section 14 of the Act of 2002 can, at best, be prolonged for a period of sixty days and the said period having elapsed long back, immediate order should be passed for implementation.

Learned counsel appearing for the State places reliance on a report filed in court on the last occasion and contends that on March 20, 2023, the accompanying person, who came to meet the Executive Magistrate, North 24-Parganss, informed that the police force would not be available on March 21, 2023, for which physical possession could not be given.

Learned counsel appearing for the debtors/private respondents submits by placing reliance on a photocopy of a purported printout of a declaration of possession issued by the authorised officer for the petitioner no. 1, apparently under Section 13 (4) of the 2002 Act, that possession has already been taken.

Learned counsel for the State also contends that on the last occasion, due to the Panchayat elections of the State, police help could not be rendered.

Since at present, the Panchayat Election is over and there is no impediment, there cannot be any reason why the implementation of the District Magistrate's order should be delayed further.

Although the private respondents/debtors seek to submit that the concerned Tribunal was not available during the relevant period, there is no reflection for such submission in the order dated August 03, 2023 passed by this Court, where a last chance was given to the private respondents to bring an appropriate order of stay, if so passed, in their application pending before the concerned Debts Recovery Tribunal.

Since there is nothing on record to indicate as to why the application pending before the Tribunal, at the behest of the private respondents, has been kept pending for so long, even prior to the non-availability of the Tribunal, there cannot be any justification in further prolonging the agony of the creditors/petitioners, since, by this time, it was expected that the borrowers would have tried their level best to obtain at least an interim order of stay from the Tribunal, if they were so entitled.

Be that as it may, it is doubtful as to whether the possession has been taken in respect of this property, since the petitioners contend that the declaration of possession, handed over in Court today by the private respondents, may pertain to a different property. There is nothing in the said document to indicate whether the same is subject-matter of the present writ petition. Moreover, in the event possession

had already been taken by the borrowers, there could not be any imaginable reason for the private respondents to oppose the prayer of the petitioners.

In such context, W.P.A. No. 13983 of 2023 is allowed, thereby directing the respondent no. 2, that is, the Executive Magistrate, North 24-Parganas, to immediately take possession of the disputed property through the Authorised Officer of the petitioner no. 1/Bank in terms of the order of the District Magistrate, Dated October 22, 2022, annexed at page 43 of the writ petition.

The said possession shall positively be taken, in compliance of Section 14 of the 2002 Act and the Rules, by the respondent no. 2 by August 22, 2023.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)