D/L. 5.
June 23, 2023.
MNS.

WPA No. 14846 of 2023

Saket Infradevelopers Private Limited
Vs.
Union of India and others

Ms. Sutapa Sanyal,
Mr. Aditya Mondal,
Mr. Shraman Sarkar

… for the petitioner.

Mr. Shaunak Ghosh

…for the respondent no. 1.

Mr. Avishek Guha,
Ms. Akansha Chopra,
Ms. Debarati Das

…for the respondent nos. 3 and 4.

Affidavit-of-service filed in Court today be kept on record.

Learned counsel for the petitioner contends that the respondents, in particular, the respondent nos. 3 and 4, have acted in patent violation of the norms of natural justice by obtaining an order under Section 14 of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) behind the back of the petitioner. It is further submitted that the petitioner first learnt about such order on or about June 20, 2023, when the petitioner received a communication dated June 19, 2023 issued by the respondent no.3- ICICI Bank Limited, which is annexed at page 134 of the writ petition.

Learned counsel places reliance on *Whirlpool Corporation Vs. Registrar of Trade marks, Mumbai and others* reported at *(1998) 8 Supreme Court Cases 1* in order to substantiate her arguments.

It is argued that even in the communication dated June 19, 2023, a cryptic sentence was mentioned indicating that the petitioner was to vacate the property mentioned therein by June 22, 2023.

Although it was stated that the order of the Chief Metropolitan Magistrate at Calcutta had been referred in the communication, no copy of the said order was given to the petitioner.

Learned counsel further contends that not even the date of the said order of the Magistrate was informed to the petitioner.

It is submitted that there was an One Time Settlement (OTS) between the parties, pursuant to which the petitioner has already paid substantial amounts. However, the only remaining amount was Rs. 8,00,00,000/- and the OTS was to expire on March 31, 2023.

It is further submitted, on instructions, that the petitioner is agreeable to pay the entire balance amount of installments of the OTS, with interest, if necessary, for the period in the interregnum, by two months.

Learned counsel appearing for the respondent nos. 3 and 4 contends that the writ petition is not maintainable *ex facie*. It is argued that first, the petitioner's remedy lies before the Debts Recovery Tribunal, which has already been intimated about the developments in the matter by the respondent no.3-ICICI Bank Limited itself.

That apart, it is argued that there was no concluded contract between the parties. The OTS referred to by the petitioner was merely at an inchoate stage. By referring to the e-mail annexed at page 130 of the writ petition, learned counsel for the respondent nos. 3 and 4 argues that the same clearly indicates that it was not to be considered as final approval until and unless the sanction letter was executed.

It is further argued that the OTS proposal, which followed the said e-mail, was merely a draft copy, sent in pursuance of the said e-mail.

It is further contended that this Court, sitting in writ jurisdiction, ought not to interfere with the action of the respondent nos. 3 and 4, since the same was in due pursuance of legal procedure.

A perusal of the communication dated June 19, 2023 indicates that the respondent no. 3-ICICI Bank Limited had intimated the petitioner about the order passed by the Magistrate, without indicating any specific date and/or a copy of the order.

However, it is well-settled that the remedy of the petitioner, if any, lies in a proceeding before the Debts Recovery Tribunal since a SARFAESI action has attained maturity.

The claim of the respondent no. 3 has already culminated in an order under Section 14 of the SARFAESI Act and, as such, cannot be reopened in the garb of a writ petition.

In any event, the petitioner is not remediless, as rightly argued by the respondent nos. 3 and 4, to the extent that the petitioner has a remedy to canvass his arguments before the Debts Recovery Tribunal.

That apart, it cannot be ignored that the respondent no.3 ICICI Bank Limited is not a government institution or instrumentality and, as such, the scope of entertaining a writ petition is extremely limited.

Although the petitioner seeks a limited protection till the petitioner can approach the Debts Recovery Tribunal, such protection cannot be granted, simply because an order to that effect without there being any special circumstances would tantamount to opening a floodgate, thereby permitting the litigants to bypass the due process of law by way of a remedy before the Debts Recovery Tribunal by filing a writ petition before this Court.

Such prayer is, thus, refused as well. However, nothing in this order shall preclude the petitioner from immediately approaching the appropriate Tribunal for the reliefs as claimed in the present writ petition and/or other ancillary reliefs.

WPA No. 14846 of 2023 is disposed of with the above observations.

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.)