Form No. J.(2)
Item No.3

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 08.08.2023

DELIVERED ON: 08.08.2023

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No. 1482 of 2023
With
IA No. CAN 1 of 2023

Mrs. Chaya Bhandari @ Chaya Das & Anr.
Vs.
Kotak Mahindra Bank Limited & Ors.

Appearance:-

Mr. Kaushik Chandra Gupta
Mr. Subhasis Sen ....**for the Appellants**

Mr. A. K. Nag
Mr. S. Banerjee
...........**for the State**

Mr. Syed Ehtesham Huda
Ms. Niharika Singh
Mr. Ashok Kumar Singh
.............**for the Respondent No.3**

Mr. Amitabha Ghosh
.............**for the Respondent No.8**

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal has been filed at the instance of the respondent nos.8 and 9 in the writ petition being, W.P.A. 16237 of 2023 challenging the order dated 25th July, 2023. The said writ petition was filed by the 1st respondent/bank to implement the order dated 12th October, 2020 passed by the District Magistrate under Section 14 of the SARFAESI Act.
2. Though there were submissions made with regard to whether the learned writ court had determination to hear the matter, ultimately the writ petition came to be disposed of by issuing directions to implement the order passed by the District Magistrate under Section 14 of the SARFAESI Act.
3. The appellants, who were impleaded as respondent nos.8 and 10 in the writ petition, claimed to be co-sharers of the property, which was the subject-matter of mortgage. The grievance of the appellants is that the order passed by the District Magistrate is well beyond the period of limitation stipulated under Section 14 of the Act as the application, which was filed by the appellants/bank under Section 14 of the Act is dated 5th December, 2019 but the District Magistrate has passed the order on 12th October, 2020, which is beyond the period of limitation prescribed under the statute. Therefore, it is submitted that the order cannot be implemented.
4. Though the submission is an arguable issue, in this intra-Court appeal we cannot consider the correctness of such submission as the writ petition was filed by the 1st respondent/bank seeking for implementation of the order passed by the District Magistrate under Section 14 of the SARFAESI Act and in terms of the scheme of the SARFAESI Act, if the appellants are aggrieved by such an order, the appropriate forum before which the correctness of the order should have been questioned is the Debts Recovery

Tribunal and not in a writ proceeding. Precisely, for this reason the learned Single Bench while disposing of the writ petition by the impugned order has made an observation that nothing in the order will preclude the borrower and/or the private respondent nos.8 and 10 (appellants herein) to approach the concerned Tribunal under Section 17 of the SARFAESI Act to ventilate their respective grievances with regard to action taken under the SARFAESI Act. Therefore, it is for the appellants to pursue such a remedy taking advantage of the observations made by the learned Single Bench while disposing of the writ petition by passing the impugned order.

5. The learned advocate appearing for the appellants would contend that forcefully the 1st respondent/bank has taken possession of the property. So far as the prayer for restitution is concerned, in this intra-Court appeal such a prayer cannot be considered. However, it will be well open to the appellants to approach the Debts Recovery Tribunal for necessary relief.

6. The learned advocate appearing for the appellants submitted that at this juncture if the appellants are to approach the Debts Recovery Tribunal, they may be non-suited on the ground of limitation. All that this Court can observe is that while computing the period of limitation for filing of an application or an appeal before the Debts Recovery Tribunal, the period during which the writ petition was pending and the period during which this appeal was pending till the receipt of the server copy of this judgment, the limitation should be computed by the learned Tribunal accordingly.

7. Thus, we find at the instance of the appellants, the order impugned cannot be interfered with.

8. Accordingly, the appeal and the connected application are dismissed with the aforesaid observations. We make it clear that in the event the appellants file an appeal or an application before the Debts Recovery Tribunal, the same shall be decided on merits and in accordance with law uninfluenced by any observation made by us in this judgment.

9. No costs.

10. It has been pointed out that in the memo of appeal as well as in the application being, IA No. CAN 1 of 2023, which has been filed in connection with MAT 1482 of 2023 through inadvertence the concerned department has recorded the same to have been filed in connection with MAT 1452 of 2023. The concerned department is directed to rectify the said mistake.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab, K.S. AR(Ct.)