AD-22
Ct No.09
04.10.2023
TN

WPA No. 19884 of 2023

State Bank of India and another
Vs.
State of West Bengal and others

Mr. Debashis Saha,
Ms. Srabanti Das
.... for the petitioners-Bank

Mr. Ranjit Rajak
.... for the State

Mr. Suman Banerjee
.... for the respondent nos.5 to 8

1. Learned counsel for the petitioners-Bank submits that the petitioners-Bank rightly applied under Section 14 of the SARFAESI Act, 2002 for obtaining possession of a property.

2. However, the concerned District Magistrate committed certain errors in passing the order thereon, to the extent that the date of the notice under Section 13(2) of the Act was mistaken and it was erroneously recorded that the borrowers/private respondents had replied to the notice under Section 13(2), whereas actually there was no such reply.

3. Consequentially, the Tribunal set aside the order of the District Magistrate and granted liberty to the present petitioners-Bank to make a fresh request to the competent authority for taking physical possession of the secured assets as per the provisions laid down under Section 14 of the Act of 2002.

4. Despite several communications being made to the Magistrate, the Magistrate is not passing such fresh order, it is argued.

5. Learned counsel for the private respondents submits that the Tribunal granted liberty to the petitioners-Bank to make a fresh application under Section 14 of the 2002 Act which is evident from the order dated November 30, 2022 passed by the Tribunal. In the absence of any such application, it is beyond the jurisdiction of the District Magistrate to pass such order.

6. Learned counsel for the State hands over a written instruction indicating that the order of the District Magistrate was set aside and, as such, could not be complied with by the Police.

7. It is seen from the materials annexed that the petitioners-Bank had not committed any error in its application under Section 14 of the SARFAESI Act, 2002.

8. Although the said application was fully in order, it was the District Magistrate who committed the errors, instigating the Tribunal to set aside the order of the District Magistrate.

9. However, the Tribunal, while doing so, did not quash or set aside the application under Section 14 filed by the petitioners-Bank but only granted liberty to the petitioners for making a "request" to the competent authority for taking physical possession of the secured assets.

10. In such context, I do not find any necessity for the Bank to file a fresh application under Section 14 of the 2002 Act, since an application, in form, is already on record. What the Bank was required to do was merely to reiterate its request on the strength of the pending application under Section 14, which has already been done by the petitioner-Bank.

11. Hence, nothing further remains for the Bank to do in order for the District Magistrate to pass necessary orders disposing of the application under Section 14 afresh.

12. In such view of the matter, WPA No. 19884 of 2023 is disposed of by directing the respondent no.2, that is, the District Magistrate, Purba Bardhaman, to dispose of the application of the petitioners-Bank under Section 14 of the SARFAESI Act, 2002 afresh by passing a fresh order in pursuance of the order of the Tribunal dated November 30, 2022 on the basis of the pending application under the said provision at the earliest.

13. It is expected that the respondent no.2 shall pass necessary orders and dispose of the said application of the Bank within three weeks from the date of communication of this order to the respondent no.2.

14. There will be no order as to costs.

15. 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.)