

09 25.08.2023
NB Ct. 14

WPA 20399 of 2023

Sailendra Nath Sadhukhan
Vs.
Officer-in-Charge, Baguihati Police Station & Ors.

Mr. Kamalesh Bhattacharyya,
Mr. Aninda Bhattacharyya.
...for the petitioner.

Mr. Sourav Chowdhury,
Ms. Sukla Das Chandra.
....for the State.

Mr. Dwaipayan Banerjee,
Mr. Abir Das.
...for the respondent no.2.

Mr. Sariful Haque,
Mr. Abhishek Bhattacharya.
...for the added party.

This is an application under Article 226 of the Constitution of India challenging a notice of possession dated 19.08.2023 annexed to the petition and a direction upon the respondent authorities not to take coercive action for dispossessing the petitioners from their residence till the hearing before the Debt Recovery Tribunal-III being SA No.59 of 2003.

Affidavit of service filed on behalf of the petitioner is taken on record.

Report filed on behalf of the State is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. No notice of arbitration was served upon the petitioner. Yet, an ex parte order was passed. Subsequently, by a letter dated 19.08.2023 that was received by the petitioner on

the same day, it was intimated that in compliance of the order passed by the learned Additional Chief Judicial Magistrate, Barasat, North 24-Parganas, the respondent no.2 requested the petitioner to vacate the property in question or else, the bank would proceed to take possession of the mortgaged property on or after 21.08.2023 under the provisions of SARFAESI Act. No copy of the order passed by the learned Magistrate was appended to the notice. On 21.08.2023, this Court directed the police authorities not to take any steps to vacate the premises till 22nd August, 2023 when the matter was to come up for hearing. On 22nd August, 2023, it was submitted on behalf of the petitioner that in spite of such direction and its communication over phone to the learned advocate and the receiver entrusted for taking possession, the police authorities assisted the dispossession of the petitioner's relatives from the property. A padlock was put by the police on the gate of the property. All these happened at about 3.45pm., although the communication to the receiver was made much before that, at about 2.30pm. It was also pointed out that the receiver behaved badly over phone and refused to comply with the Court's order. On that date, it was also submitted on behalf of the State that the State had communicated the order to the Sub-inspector of Police concerned. In spite of this, the Court's order was violated.

Learned counsel appearing on behalf of the State relies on the report and submits as follows. The padlock was not put by any police personnel. However, pursuant to an order passed

by this Court on 22.08.2023, the padlock has been removed and the dispossession undone.

Learned counsel appearing on behalf of the receiver submits as follows. The receiver tenders an unconditional apology before this Court. However, she was actually not confident with phone call to act contrary to directions passed by the learned Magistrate.

Learned counsel appearing on behalf of the financier submits as follows. The instant action had not been taken in pursuance of the arbitration notice in this case. The arbitration notice was on 2021. By efflux of time, it has already become infructuous. The possession was being taken up pursuant to an application made by the financier under the SARFAESI Act under Section 14 of the SARFAESI Act. Pursuant to such application, the learned Additional Chief Judicial Magistrate passed an order on 15.07.2023. Although, it is not required to give any notice to the petitioner in this regard, still a financier gave a notice to them on 19th August, 2023 to vacate the premises by 21.08.2023. In fact the petitioner has already taken steps by challenging the notice under Section 13(4) of the SARFAESI Act before DRT under Section 17 of the said Act. The same is still pending.

A copy of the order of the learned Magistrate as filed in Court is taken on record and is also handed over to the learned counsel for the petitioner.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the writ petition and copies of the documents filed.

It appears that no action had been taken in response to the arbitration notice. It was only that the financier had made an application under Section 14 of the SARFAESI Act pursuant to which an order was passed by the learned Magistrate on 15.07.2023.

The notice under Section 13(4) has already been challenged by the petitioner before the learned DRT.

This matter was entertained on the ground that there was a violation of principles of natural justice. The petitioner was not heard in the arbitration proceeding. Now that the same is no more a ground, I find no other reason to detain the writ petition.

The petitioner had on the earlier dates failed to specifically point out certain facts that were nevertheless there in the writ petition.

It should also be pointed out that the receiver having received the notice, even though over phone about an order passed by this Court ought to have proceeded cautiously when the matter comes. There was no stipulation that the dispossession had to be done on that day or within a particular time.

Be that as it may, the petitioner shall be at liberty to take steps before the learned DRT.

The respondent shall also be at liberty to take appropriate steps under the SARFAESI Act in pursuance of the application under Section 14 of the said Act.

With these observations, the writ petition is dismissed.

Since affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted.

Learned Tribunal as well as the learned Chief Judicial Magistrate shall not be swayed any observation made in the orders passed in this application.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)