AD-38
Ct No.09
16.10.2023
TN

WPA No. 20464 of 2023

Partha Sarathy Ghosh
Vs.
Punjab National Bank Housing Finance Limited
and another

Mr. Sounak Mukhopadhyay,
Ms. Dipankwita Das,
Mr. Debarshee Bhattacharya
.... for the petitioner

Mr. Aman Agarwal,
Ms. Rupal Singh,
Ms. Manisha Das,
Mr. Ashok Kumar Singh
.... for the respondents

1. Affidavit-of-service filed today be kept on record.

2. The petitioner contends that the petitioner, upon getting a notice under Section 14 of the SARFAESI Act, 2002, learnt about a purported proceeding having been taken out by the Bank under Section 13(4) of the said Act. It is contended that prior thereto, no notice was served on the petitioner. The petitioner was stuck up in Bhubaneswar during the lockdown period for which the bank's letters addressed to the petitioner could not reach the petitioner. It is contended that the Bank fully knew the said fact.

3. That apart, the EMI amounts paid by the petitioner were not considered by the Bank in calculating the dues and the Bank admits that its records prior to October 2014 are missing.

4. Learned counsel appearing for the Bank controverts all the allegations made by the petitioner. Insofar as the address of the petitioner at Bhubaneswar is concerned, it is contended that at each juncture, the Bank duly notified the changes in the reference rates to the petitioner by e-mail and by letters. Moreover, the lockdown period was long over in 2021, when certain communications were also made.

5. That apart, the argument as to the EMI amounts having not been considered is belied by the communications made by the Bank. By placing reliance on the communication by e-mail annexed at page-58 of the writ petition, learned counsel for the Bank reiterates that the loan account was sanctioned for 240 months at floating rate structure. However, the rate of interest was linked to the reference rate and any modification in the same impacted the rate of interest of the loan. The increase/decrease in the reference rate was duly notified to the petitioner by e-mail and letters.

6. As such, there is no irregularity or infirmity in the procedure adopted by the Bank.

7. Factual disputes are involved between the parties. However, this court is not the appropriate forum for adjudicating such issues on merits by taking evidence. The court seeks to exercise a self-imposed restriction by not entertaining the writ petition under Article 226 of the Constitution of India since the petitioner has an equally efficacious alternative remedy in the form of a challenge under Section 17 of the SARFAESI Act, 2002 before the appropriate Tribunal.

8. In order to give a short breather to the petitioner to move the Debts Recovery Tribunal, the respondent-Bank is restrained from taking any coercive action against the petitioner for a period of three weeks from date, within which the petitioner would be at liberty to approach the concerned Debts Recovery Tribunal with a challenge under Section 17 of the SARFAESI Act, 2002. If such a challenge is preferred by the petitioner, the Tribunal shall consider the same in accordance with law as well as any interim order which may be sought by the petitioner.

9. It is, however, made clear that this court has not gone into the merits of the contentions of the parties at all and the *ad hoc* protection given to the petitioner is, as the adjective suggests, merely an *ad hoc* arrangement to enable the petitioner to prefer a formal challenge before the appropriate forum and is not a commentary on the merits of the respective rights and contentions of the parties.

10. WPA No. 20464 of 2023 is disposed of with the above observations.

11. Since affidavits have not been invited, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

12. There will be no order as to costs.

13. 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.)