

04.09.2023
Item No.13
RP/AN
Ct. No.1

MAT 1711 of 2023
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IA NO.CAN 1 OF 2023
Aditya Birla Finance Limited & Anr.
Vs.
Intelnet IT Solutions Private Limited & Ors.

Mr. Subhankar Nag
Mr. S. Mukherjee
... for Appellants
Mr. Siddhartha Banerjee
Mr. Santanu Mishra
Mr. Subir Banerjee
Mr. Arun Kumar Mishra
... for respondents
Mr. Anand Farmania
Ms. Indumouli Banerjee
... for State of West Bengal

1. This intra-Court appeal is directed against the order dated 31st August, 2023 passed in WPA 21057 of 2023. The appellants, being the respondents in the writ petition, are aggrieved by the directions issued by the learned Single Bench to restore possession of the secured asset, which had been taken by the appellants, pursuant to an order passed under Section 14 of the SARFAESI Act, 2002. The learned Single Bench has also restrained the writ petitioners/respondents from dealing with and/or parting with possession of and/or encumbering or transferring the secured assets. Learned writ Court in paragraph 38 of the impugned order has observed that arguable questions have been raised by the writ petitioners and opined that the writ petitioners have to be heard, for which the appellants/respondents have to be filed affidavit-in-opposition within a time

frame and the matter has been directed to be listed in the Combined Monthly List of October 2023.

2. Learned writ Court has also left the question of maintainability of the writ petition open to be argued at the time of final hearing of the writ petition. It is the submission of the appellants that when the appellants had raised the issue regarding the maintainability of the writ petition, the same is required to be decided and in the interregnum to restore the possession of property, possession of which has been taken by the appellants, which tantamount to granting the main relief in the writ petition at an interlocutory stage.
3. Considering the fact that the learned writ Court has already observed that arguable points have been raised by the writ petitioners and has also noted the issue regarding maintainability of the writ petition, we are of the view that ends of justice would be met if the writ petition is disposed of at an earliest. Therefore, we direct the appellants to file their affidavit-in-opposition in the writ petition not later than 8th September, 2023. reply, if any, be filed not later than 13th September, 2023. We request the learned Single Bench to take up the matter for consideration in the week commencing 18th September, 2023. Till the time the writ petition is decided, the status quo passed on 31st August, 2023, which is prevailing as on date, shall prevail.
4. The learned Advocate appearing for the respondents/writ petitioners submitted that on account of the appellants taking actual physical possession of the secured asset, the respondents/writ petitioners have no access to certain immovable articles, which are not subject matter of hypothecation and requests that the such

articles may be permitted to remove by the respondents/writ petitioners. Learned advocate appearing for the appellants does not have any serious objection to the same for which purpose we direct the respondents/writ petitioners to submit request in writing by today, which shall be taken note of and in presence of an officer of the appellants the respondents/writ petitioners are permitted to remove the immovable articles by tomorrow.

5. With the aforesaid directions, this appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)