

AD-10
Ct No.09
05.09.2023
TN

WPA No. 21634 of 2023

Ratan Dey and another
Vs.
State of West Bengal and others

Mr. Pratip Mukherjee,
Mr. Samrat Chowdhury

.... for the petitioners

Mr. Ananda Farmania,
Ms. Indumouli Banerjee

.... for the State

- 1.** On the prayer of learned counsel for the petitioners, the petitioners are directed to file the affidavit-of-service during the course of the day.
- 2.** It is submitted that due service has been effected.
In fact, the State is represented through counsel, although none appears for the other respondents at the time of call.
- 3.** The petitioners submit that since the concerned Debts Recovery Tribunal where the petitioners have already applied under the due provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (hereinafter referred to as “the SARFAESI Act, 2002”) is not functioning

regularly, the petitioners will be rendered remediless.

4. In the circumstances of the present case, an order has been passed under Section 14 of the SARFAESI Act, 2002. The petitioners have preferred a challenge before the Tribunal but have not yet obtained any number on their application, although the diary number is disclosed by the petitioners.
5. In such circumstances, the petitioners seek to invoke the principle of *ubi jus ibi remedium*.
6. Since the petitioners have pleaded that they have already approached the concerned Tribunal, for the ends of justice, the petitioners ought to be given a limited window for moving their application before the concerned Debts Recovery Tribunal.
7. Accordingly, WPA No. 21634 of 2023 is disposed of by granting the petitioners permission to move the application under Section 17 of the SARFAESI Act, 2002 before the concerned Debts Recovery Tribunal. The Debts Recovery Tribunal shall allot a proper number to the petitioners on the basis of the application filed by the petitioners within 48 hours from the date of communication of this order to the Tribunal by acting on a server copy of the order, without insisting upon prior production

of a certified copy. The Tribunal shall also take up for hearing the interim prayer of the petitioners on the basis of the application filed by the petitioners before the Tribunal, within a week from the date of communication to the Tribunal.

- 8.** Without going into the merits of the case of the respective parties, there shall be a stay of operation of the order passed by the Chief Judicial Magistrate, Barasat under Section 14 of the SARFAESI Act, 2002 till September 22, 2023 or until further order, as and when passed by the concerned Tribunal, whichever is earlier.
- 9.** It is made clear that this court has not even appreciated *prima facie* the contentions of the parties and it will be open to the Tribunal to pass orders independently and without being prejudiced by the observations made herein. The Tribunal shall also be at liberty to vary, modify, extend and/or vacate the order passed herein.
- 10.** Liberty is given to the petitioners to mention the matter before this court in the event the Tribunal does not sit even for once till September 15, 2023.
- 11.** There will be no order as to costs.

12. 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.)