

AD-11
Ct No.09
05.09.2023
TN

WPA No. 21693 of 2023

Habibul Hassan Sekh and another
Vs.
The District Magistrate, South 24 Parganas
and others

Mr. Sabyasachi Chatterjee,
Mr. Omar Faruk Gazi

.... for the petitioners

Mr. Sumon Ghosh,
Mr. Sankha Prasad Roy

.... for the State

Mr. Shiv Mangal Singh,
Ms. Jahan Ara Kulsum

.... for the respondent-Bank

1. Affidavit-of-service filed today be kept on record.
2. The petitioners submit that the petitioners jointly own a property along with the respondent no.7. The respondent no. 7 purchased a different property adjacent to the said joint property and had taken a loan against it. However, subsequently the petitioners came to know that in the garb of realizing the dues of the Bank for unpaid loan by the respondent no.7, the Bank is trying to take possession of the entire property, including the joint property of the petitioners as well. An order under Section 14 of the SARFAESI Act, 2002 has also been passed to that effect.

- 3.** Upon hearing learned counsel for the parties, it transpires that the remedy of the petitioners lies before the concerned Debts Recovery Tribunal, since Section 17 of the SARFAESI Act, 2002 is wide enough to accommodate any person aggrieved by any steps taken under the SARFAESI Act, 2002. Since no strained relationship between the petitioners and the private respondent has been pleaded, it can be presumed that the petitioners had knowledge regarding the proceedings under the 2002 Act. Therefore, nothing prevented the petitioners from approaching the Tribunal with the disputes as raised now.
- 4.** Hence, there is no scope of entertaining the present writ petition. Moreover, a factual enquiry is required to be undertaken for ascertaining whether the petitioners are justified in arguing that their property has also been roped into the secured assets of the Bank.
- 5.** In such view of the matter, WPA No. 21693 of 2023 is disposed of by granting liberty to the petitioners to approach the concerned Debts Recovery Tribunal for the reliefs as sought herein. If so approached, the Tribunal shall decide the same independently and in accordance with law

without being influenced in any manner by any of the observations made herein.

- 6.** There will be no order as to costs.
- 7.** 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.)