

5th September,
2023
(AK)
Supplementary
01

W.P.A 21722 of 2023

Krishna Kamala Kali Agro Products Private Limited and
others
Vs.
Indian Bank and others

Mr. Debjit Mukherjee
...for the petitioners.

Mr. Rishav Dutt
Mr. S. Sharma
...for the Indian Bank.

1. Learned counsel for the petitioners contends that pursuant to an order dated July 17, 2019 under Section 14 of the SARRFAESI Act, 2002, the respondent-Bank gave a notice yesterday indicating that possession would be taken from the petitioners today.
2. During argument, learned counsel for the respondent-Bank submits, on instruction, that possession might have been taken in the meantime.
3. As such, the matter is being heard expeditiously.
4. A perusal of the documents on record shows that the Bank waited since July 17, 2019 for taking possession pursuant to the order of even date, under Section 14 of the 2002 Act.

5. Hence, heaven will not fall if the possession is restrained, if not already taken, and appropriate orders passed against the Bank.

6. Moreover, learned counsel for the petitioners argues that at the present juncture, there is no functional alternative forum for ventilating the petitioners' grievances.

7. The petitioners' application under section 17 of the 2002 Act is pending since long and was fixed next on September 19, 2023.

8. However, since the regular Presiding Officer is absent in the DRT-II Bench, where the petitioners' application is pending, the matters of the said Bench were assigned to the Siliguri Bench.

9. Yet, the said assignment was only till last August.

10. Hence, it is submitted that the petitioners are at present without any effective remedy. Even without going into the reasons for the inordinate delay on the part of the petitioners as well, in seeking extension of interim orders or obtaining fresh interim orders from the tribunal, since the petitioners do not have any forum at present, this court ought to assume jurisdiction under Article 226 of the Constitution of India, since the doctrine *ubi jus ibi remedium* is squarely applicable.

11. In order to give some breathing space to the petitioners, liberty is granted to the petitioners to

approach the Siliguri Bench of the Debts Recovery Tribunal (DRT) immediately for appropriate interim reliefs with regard to the secured assets.

12. Upon such approach being made, the Siliguri Bench shall immediately fix dates, preferably within 48 hours from the application being made by the petitioner, for consideration of grant of interim orders to the petitioners.

13. In the event the possession has not yet been taken, that is, till the present moment, which is 2.12 p.m., the respondents shall remain restrained from taking possession of the property for four weeks.

14. In the event possession has been taken prior to the above-mentioned time, the respondent-Bank shall remain restrained by an order of injunction from dealing with, transferring, alienating and/or encumbering the secured assets, including the movables therein, in any manner whatsoever also for a period of four weeks.

15. Such interim order, however, shall be subject to any interim orders which may be passed by the tribunal when so approached by the petitioners in terms of the above liberty.

16. It is made clear that it will be open to the concerned Bench of the DRT to independently decide the petitioners' prayer for interim order in accordance with law without being influenced in any manner by any of the

observations made herein as well as to vary, modify, vacate and/or extend this interim order, within the discretion of the said tribunal.

17. The parties as well as all concerned shall act on the written communication of the learned Advocates for the parties, coupled with server copy of this order, without insisting upon prior production of a certified copy thereof.

18. WPA 21722 of 2023 is disposed of in the light of the above observations.

19. Since no affidavits were invited, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)