D/L. 23.
October 6, 2023.
MNS.

WPA No. 21895 of 2023

State Bank of India and another
Vs.
The State of West Bengal and others

Mr. Debashis Saha,
Ms. Srabanti Das

… for the petitioners.

Mr. Asish Kumar Guha,
Mr. Rajendra Chaturvedi

…for the State.

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

2. Learned counsel appearing for the petitioners submits that despite attempt to serve, the private respondent is avoiding service. It is pointed out from the affidavit-of-service filed in court today that communication was sent to the private respondent as far back as on September 11, 2023, but the track report indicates that service has not yet been effected.

3. It is further submitted by the petitioners that the private respondent is avoiding service and not appearing in the forums below.

4. Hence, the writ petition is taken up for hearing in the absence of the private respondent.

5. Learned counsel for the petitioners contends that the District Magistrate went beyond his authority under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') in observing that the Mutation Certificate furnished by the Authorised Officer of the Bank appears to be a forged document.

6. Learned counsel for the petitioners places reliance on a judgement in *Jitendra Singh Vs. State of Madhya Pradesh and others* reported at *2021 SCC OnLine SC 802* for the proposition that records of rights do not confer title.

7. For the proposition as to the limited scope of enquiry under Section 14 of the SARFAESI Act, learned counsel places reliance on a Division Bench judgement of the Bombay High Court in *Phoenix ARC Private Limited and another Vs. State of Maharashtra* reported at *2022 SCC OnLine Bom 1710*. The Division Bench observed in the said case that Section 14 of the SARFAESI Act does not contemplate the following :

i) Any notice to be given to either Borrower or a Third Party,

ii) Borrower or a Third Party to file any reply to the application,

iii) Borrower/Third party to be heard,

iv) Adjudication as to the legality or validity of the mortgage,

v) Adjudication as to the quantum of the debt claimed by the secured creditor,

vi) Adjudication of any issues such as limitation, etc.

8. Such proposition of law is well settled.

9. In any event, as per the language of Section 14 of the SARFAESI Act, the mere charter of the District Magistrate under the said Section is to implement the order of taking possession of a property.

10. Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset under the said SARFAESI Act, request the District Magistrate to take possession of the

secured asset, upon which, the District Magistrate shall :

a) take possession of such asset and documents relating thereto, and
b) forward such assets and documents to the secured creditor.

11. The District Magistrate, at best, can look into whether the stipulations of Section 14, proviso have been complied with.

12. In the present case, thus, the District Magistrate has exceeded his jurisdiction.

13. The District Magistrate has, in the instant case, palpably exceeded his jurisdiction as conferred by law. The Magistrate, upon directing the concerned Block Land and Land Reforms Officer to file a report, took cognizance of the report for the purpose of observing that the 'Mutation Certificate' furnished by the Authorised Officer of the State Bank of India appears to be a forged document. However, such enquiry is entirely beyond the purview of the District Magistrate under Section 14 of the 2002 Act.

14. Since the property-in-question is undisputedly a secured asset regarding which the bank has sought possession under Section 14 of the SARFAESI Act, the District Magistrate could

not, within the purview of law, enter into the question as to whether the 'Mutation Certificate' produced by the bank was forged or not.

15. The District Magistrate had only to act on the request of the secured creditor and give possession of the asset to the secured creditor through its authorised officer.

16. Hence, the impugned order dated May 29, 2023 is palpably without jurisdiction.

17. Thus, WPA No. 21895 of 2023 is allowed, thereby setting aside the order dated May 29, 2023 and directing the District Magistrate to dispose of the petitioner's application under Section 14 of the SARFAESI Act afresh within November 24, 2023 positively, taking note of the observations made hereinabove.

18. There will be no order as to costs.

19. 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.)