Form No. J.(2)
Item No.2

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 19.09.2023

DELIVERED ON: 19.09.2023

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 1779 of 2023
With
I.A. No. CAN 1 of 2023
Indian Bank & Anr.
Vs.
Krishna Kamala Kali Agro
Products Pvt. Ltd. & Ors.

Appearance:-

Mr. Sakya Sen, Sr. Adv.
Ms. Priyanka Tibrewal
Mr. Siddhartha Sharma
Mr. Rishav Dutt
Mr. A. Kataruka ....**for the appellants**

Mr. Sk. Md. Galib
Mr. Tamal Taru Panda ....**for the State**

Mr. Nimish Mishra
Mr. Debjit Mukherjee
Mr. Gaurav Singh ....**for the respondent nos. 1 to 4**

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the bank is directed against the order dated 5th September, 2023 passed in W.P.A. 21722 of 2023. The respondents/writ

petitioners had filed the writ petition questioning the action initiated by the appellants/bank in bringing the mortgaged property for sale for recovery of the outstanding payable by the respondents/writ petitioners.

2. The learned senior advocate appearing for the appellants/bank submitted that the challenge in the writ petition is not to action initiated by the appellants/bank under the SARFAESI Act in a substantive manner but it is only with regard to taking over of possession of the mortgaged asset. The learned Single Bench has disposed of the writ petition by observing that in the event the possession has not been taken till 2.12.p.m. on 5th September, 2023, the appellants/bank were restrained from taking possession of the property for four weeks. In the event possession had been taken prior to the aforementioned time, the learned Single Bench directed that the appellants/bank shall remain restrained 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. The aforementioned interim order was subject to any interim orders that may be passed by the tribunal in an appeal filed by the respondents/writ petitioners under section 17 of the SARFAESI Act challenging an order passed by the District Magistrate under section 14 of the SARFAESI Act dated 17th July, 2019.

3. The reason for the respondents'/writ petitioners' approaching the writ Court is on the alleged ground that the tribunal is not taking up regular matters and there is vacancy in the members of the tribunal, consequently, the respondents/writ petitioners had to approach the learned writ Court. However, in the impugned order, the learned Single Bench has relegated

the respondents/writ petitioners back to the Debts Recovery Tribunal to pursue its interim application filed in an appeal before the tribunal challenging an order passed under section 14 of the SARFAESI Act dated 17th July, 2019.

4. The learned advocate appearing for the appellants submitted that the interim order, which was granted by the learned tribunal was not extended beyond 3rd February, 2020 and upto 31st August, 2023 the tribunal was considering the matters and passing orders and nothing prevented the writ petitioners from seeking for appropriate protection before the learned tribunal.

5. Be that as it may, since in the absence of sufficient number of members in the learned tribunal, the jurisdiction of the cases were placed before the Debts Recovery Tribunal at Siliguri and this position is said to continue even as on date. However, this is being disputed by the learned advocate appearing for the respondents/writ petitioners.

6. The appellants/bank would contend that the possession of the secured asset has been taken well before the time stipulated in the impugned order. In any event, there is no challenge made by the respondents/writ petitioners to the action initiated by the appellants/bank under section 13(4) of the SARFAESI Act and what is challenged is only a consequential action, namely an order passed under section 14 of the SARFAESI Act.

7. In any event, since the application for stay along with the appeal is pending before the Debts Recovery Tribunal, in the interregnum, it would not be appropriate in a writ proceeding to interdict an order or to pass any interim order pending consideration of the matter by the learned tribunal.

8. Since the sale notification has already been issued and the sale is scheduled to be conducted on 20th September, 2023, we find no reason to interdict such proceedings.

9. Accordingly, the appeal stands partly allowed and the order of injunction granted in the impugned order stands vacated permitting the appellants/bank to proceed with the auction scheduled to be held on 20th September, 2023.

10. Since the application filed by the respondents/writ petitioners praying for stay of the proceedings pursuant to an order passed under section 14 of the SARFAESI Act is pending before the Debts Recovery Tribunal-II, Kolkata and at present since the requisite number of members are not available in the Debts Recovery Tribunal at Kolkata, we would request the Debts Recovery Tribunal, Siliguri to take up such application preferably within a period of ten days from the date on which this order is placed before the learned tribunal and after hearing the parties, the learned tribunal shall pass orders on merits and in accordance with law.

11. With the above directions/observations, the appeal stands partly allowed. Consequently I.A. No. C.A.N. 1 of 2023 is disposed of.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Raja/PALLAB AR(Ct.)