24th November, 2023
(AK)
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**W.P.A. 22585 of 2022**

Satyajit Ghosh
Vs.
Canara Bank and others

Mr. Ganesh Ch. Patra
...for the petitioner.

Ms. Sreemoyee Mitra
...for the Canara Bank.

1. The matter had been moved on October 9, 2023. An interim order had been granted on the submission of the petitioner that one Smt. Bani Ghosh, who died on August 3, 2015, was already deceased when the demand notice under the SARFAESI Act was issued to her.

2. Learned counsel for the petitioner, however, despite repeated query of court, fails to produce any copy of the death certificate of Bani Ghosh or the demand notice on her.

3. On the contrary, learned counsel for the Bank submits that the borrower was a company of which the petitioner and his father were Directors and the petitioner's mother Smt. Bani Ghosh was a personal guarantor.

4. It is submitted that although the Bank initiated proceedings under the SARFAESI Act, the same was not merely against Bani Ghosh alone but notices were duly

issued to the borrower-company as well as the petitioner and the other Director.

5. Learned counsel submits that the demise of Smt. Bani Ghosh, the mother of the petitioner and the guarantor and the petitioner's father, who was the other Director, was never informed to the Bank.

6. However, it is submitted that nothing hinges on the issue since the petitioner and the borrower company were served duly with notices, upon which SARFAESI proceedings were initiated and an application of the Bank under Section 14 of the said Act was initiated and is now pending.

7. Learned counsel for the Bank cites two unreported judgments of the Delhi High Court and the Telangana High Court in support of the proposition that the purpose of issuance of fresh demand notice under Section 13(2) of the SARFAESI Act is only to enable the legal heirs of the deceased borrower/guarantor to clear the outstanding dues within stipulated sixty days.

8. In any event, in the present case, despite assuming that the personal guarantor has died in the meantime along with one of the Directors, the borrower company itself was served with a notice, as was the petitioner, who is also one of the co-Directors.

9. Hence, the petitioner cannot be absolved of the liability of the debt merely on the ground of demise of the

personal guarantor/mother of the petitioner and the other Director/father of the petitioner.

10. In any event, the demise of the said Bani Ghosh has not been established by producing any valid death certificate as well.

11. Thus, there is no occasion to continue the interim order granted at the inception.

12. Moreover, the petitioner, although finding time to prefer the writ petition, has not yet preferred any application before the Debts Recovery Tribunal which is the appropriate forum for deciding the issues involved.

13. It was recorded in the order dated October 9, 2023 that the petitioner was granted liberty to approach the concerned Debts Recovery Tribunal under Section 17 of the SARFAESI Act in the meantime and obtain appropriate interim orders; however, no such effort has been made by the petitioner till date.

14. Hence, there is no justification in keeping the writ petition pending further or interfering with the impugned action of the respondents.

15. Accordingly, WPA 22585 of 2022 is dismissed on contest without any 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.)**