

AD-41
Ct No.09
17.10.2023
TN

WPA No. 22830 of 2023

Smt. Sumitra Ghosh and others
Vs.
State of West Bengal and others

Mr. Ranjan Kali,
Mr. Mitul Chakraborty,
Ms. Mili Saha,
Ms. Payel Nath

.... for the petitioners

Mr. Wasim Ahmed,
Mr. Md. Shehabuddin

.... for the State

- 1.** Affidavit-of-service filed today be kept on record.
- 2.** The petitioners contend that the petitioners/co-owners were the victims of fraud perpetrated by the respondent no.6, one of the co-owners.
- 3.** It is argued that the property was apparently mortgaged to the respondent no.4-Bank without any prior intimation or knowledge of the present petitioners, who also have title in the property.
- 4.** The petitioners, it is alleged, for the first time learnt about the order of the District Magistrate dated September 14, 2022 in the communication dated July 31, 2023 annexed at page-17 of the writ petition. It is argued that the petitioners are also armed with an order of injunction passed by the competent civil court, whereby the

defendants therein, including the private respondent, were restrained from making any construction and further changing the nature and character of the suit property and to transfer the same to any third party.

5. Heard learned counsel for the parties.
6. The compass of Section 14 of the SARFAESI Act, 2002 is extremely limited.
7. The Magistrate, while deciding such an application, is not empowered to enter into the disputed questions of right, title and possession. Secondly, the petitioners have an equally efficacious alternative remedy, if not more efficacious, before the Tribunal under Section 17 of the SARFAESI Act, 2002.
8. Hence, there is no scope of interference under Article 226 of the Constitution of India on the allegations of the petitioners. Since the petitioners allege fraud, the same involve adjudication on questions of fact upon taking *prima facie* evidence which is within the domain of a challenge under Section 17. Although the petitioners claim that they do not have any *locus standi* to prefer such a challenge under Section 17, such argument is belied by the well-settled legal position and the language of Section 17

which empowers anybody, including a third party, aggrieved by any measure taken by the Bank under Section 13(4) of the SARFAESI Act, 2002 to prefer such a challenge before the Tribunal.

- 9.** Insofar as the injunction is concerned, the same in no manner restrains the Bank from taking possession of the property, since the Bank was not a party in the suit, nor is bound by the order of injunction.
- 10.** Learned counsel for the State, moreover, submits that the possession has already been taken by the Authorized Officer of the Bank.
- 11.** Hence, there is no scope of interference in the present writ petition in any event.
- 12.** Be that as it may, the petitioners are always at liberty to approach the appropriate Tribunal to ventilate their grievances with regard to further steps being taken in respect of the secured assets by way of an application under Section 17 of the SARFAESI Act, 2002.
- 13.** Hence, WPA No. 22830 of 2023 is disposed of by granting liberty to the petitioners to prefer such a challenge before the appropriate Tribunal which will be decided independently by the Tribunal

without being unnecessarily influenced by any of the observations made herein.

- 14.** There will be no order as to costs.
- 15.** 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.)