AD-12
Ct No.09
16.10.2023
TN

WPA No. 23307 of 2023

M/s. K.D. Enterprise and others
Vs.
Indian Bank and others

Mr. Soumen Kr. Dutta,
Mr. Partha Sarathi Basu
…. for the petitioners

Mr. Shaswat Nayak,
Mr. Snehasish Chakraborty,
Mr. Debasish Chakraborti
…. for the Indian Bank

1. Learned counsel for the petitioners contends that the provisions of law including Rule 8 of the SARFAESI Rules were squarely violated.

2. It is submitted that since the Siliguri Bench was taking up the matters of the Kolkata Debts Recovery Tribunal, Bench-II on an urgent basis but was under extreme pressure, the petitioner's pending challenge under Section 17 of the SARFAESI Act, 2002 could not be moved before the said forum.

3. It is contended that as of now, there is no Bench for taking up the matters of the Second Bench of the Kolkata Debts Recovery Tribunal.

4. Learned counsel appearing for the Bank contends that clear thirty days' notice was given before the sale. Admittedly, the sale notice was issued on July 14, 2023 and the petitioners received the same on July 27, 2023. The date of the sale was August 29, 2023 and, as such, there was no violation of the provisions of law or Rules. It is contended that in the meantime, sale certificate has been issued in favour of a third party and, as such, nothing remains in the challenge of the petitioners.

5. It is also argued by the Bank that the right of redemption of the petitioners is long closed, since the petitioners did not participate in the auction sale.

6. However, even apart from the right of redemption, the petitioners/borrowers have the right under the law to challenge the sale and the sale process.

7. Since the petitioners allege violation of provisions of law, it would not be appropriate if the petitioners are ousted from such challenge altogether by the third party purchaser before the cause of the petitioners is ventilated before the Debts Recovery Tribunal. Such a situation would attract the principle of *ubi jus ibi remedium.*

8. Hence, to enable the petitioners to ventilate the petitioners' challenge before the appropriate forum empowered to take up the matters of the Kolkata Debts Recovery Tribunal, Bench-II, the respondents are directed to maintain *status quo* with regard to the subject-matter of the sale/secured assets till December 22, 2023 or until further order, whichever is earlier, passed by the concerned Bench of the Debts Recovery Tribunal.

9. WPA No. 23307 of 2023 is, accordingly, disposed of with the above directions.

10. It is made clear that this court has not entered into the merits of the rival contentions of the parties and it will be open to the concerned Bench of the Tribunal or the Bench taking up its matters to decide all questions on merits without being influenced by the observations above.

11. It is further clarified that it will also be open to the Tribunal to vary, modify, vacate and/or extend the order passed by this court.

12. Judicial notice is also taken of the fact that at present there is no designated Bench to take up even urgent matters of the Kolkata Debts Recovery Tribunal, Bench-II. It is expected that the Administration shall take immediate steps for assigning the urgent matters of the said Bench to some other Bench and/or ensure that a Presiding

Officer is assigned to the Second Bench of the Kolkata Debts Recovery Tribunal at the earliest.

13. There will be no order as to costs.

14. 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.)