

M/L. 24.
October 9, 2023.
MNS.

WPA No. 23353 of 2023

Sri Byasmuni Gupta and another
Vs.
Punjab National Bank and another

Mr. Saptarshi Banerjee,
Mr. Kuntal Banerjee

... for the petitioners.

Mr. Abhishek Banerjee,
Ms. Parna Raychoudhury

...for the respondents.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioners raises certain arguable questions.
3. First, it is submitted that the impugned sale notice gives less than thirty days to the petitioners which is *de hors* the law.
4. Secondly, it is argued that although previous sale notices have been stayed by the Debts Recovery Tribunal, a similar sale notice has been issued afresh by the petitioner, thereby trying to bypass the orders of the Tribunal.
5. Thirdly, it is submitted by the petitioners that one of the borrowers is dead, but his legal heirs have not been impleaded or notified.

6. Lastly, the notice was not affixed in any conspicuous area of the property.
7. Such points are disputed by learned counsel for the respondents, who also contends that on similar issues an IA (interlocutory application) has been filed before the concerned Debts Recovery Tribunal, which is pending. As such, it is submitted that the petitioner cannot take advantage of two different proceedings on similar issues before two different forums.
8. The Debts Recovery Tribunal, that is, the Second Bench thereof, before which the matter is pending, is not functioning regularly at the present juncture, but the Siliguri Bench has been vested with the temporary power of taking up urgent matters of the Kolkata Bench. As such, the pressure on the said Siliguri Bench is well-understood.
9. Keeping in view such circumstances, it cannot be said that the petitioner has an equally efficacious alternative remedy at the present moment. However, since the petitioner has already approached the concerned Tribunal with an application under the appropriate

provision of law, the writ court chooses not to decide finally the disputes raised herein.

10. However, for the ends of justice, in order to enable the petitioner to have an appropriate remedy, WPA No. 23353 of 2023 is disposed of by restraining the respondents from acting on the confirmation of sale, which has already taken place pursuant to the impugned sale notice, and/or from issuing a sale certificate till November 30, 2023 or until further orders passed by the Tribunal, which is earlier.

11. This order is passed on an *ad hoc* basis without deciding even *prima facie* the merits of the respective cases of the parties, only to enable the petitioner to have appropriate remedy before the appropriate forum and it will be the concerned Tribunal or Bench which is in charge of the Tribunal to decide all issues, if necessary by varying, modifying, vacating or extending the interim order passed herein.

12. The petitioner is granted liberty to approach the concerned Tribunal having urgent jurisdiction in the matter in the meantime.

13. If so approached, the Siliguri Bench and/or any other Bench having urgent determination

of the Bench where the application of the petitioner is pending, shall give utmost priority to the matter and decide the petitioner's prayer for ad interim orders as expeditiously as possible, preferably within three weeks from the date of such approach being made by the petitioner.

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.)