

D/L. 21.
October 18, 2023.
MNS.

WPA No. 23406 of 2023

Suraj Trading Company and others
Vs.
State of West Bengal and others

Mr. Pratip Mukherjee,
Mr. Amarnath Agarwal

... for the petitioners.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu

...for the State.

Mr. Kaushik Mondal,
Ms. Mousumi Pal

...for the respondent-Bank.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioners contends that a sale notice has been issued in respect of the property. The petitioners cannot challenge the same under Section 17(1) of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) in view of non-availability of a Presiding Officer in the concerned Bench, that is, the Debts Recovery Tribunal, Kolkata – Bench II.

3. Learned counsel for the petitioners seeks an interim protection to enable the petitioners to approach the appellate tribunal for allocation of the petitioners' application under Section 17 of the SARFAESI Act, 2002 to some other Bench.
4. Learned counsel appearing for the respondent-Bank contends that the sale notice which furnishes the primary cause of action of the writ petition, has since been rendered infructuous in view of no bid being received.
5. Learned counsel for the petitioners submits that despite such non fruition of the sale, the petitioners apprehend further action on the part of the bank, for which a protection is required.
6. However, the contention of the petitioner cannot be accepted, since the primary cause of action of the writ petition, being the sale-in-question, has already failed to serve its purpose and the present challenge has become infructuous. I do not find any immediate cause of action or threat to furnish urgency sufficient for grant of interim protection by the writ court.

7. Accordingly, WPA No. 23406 of 2023 is disposed of with liberty to the petitioners to approach the appellate tribunal with an application under Section 17A of the Recovery of Debts And Bankruptcy Act, 1993 for the purpose of transfer of their application under Section 17 of the said Act to another Bench.
8. If such application is made before the Appellate Tribunal within one working week from this date, the appellate authority shall decide the same and allocate the matter to some other functional Bench of the Debts Recovery Tribunal at the earliest, preferably within three weeks thereafter.
9. There will be no order as to costs.
10. 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.)