23-02-2023
ct no. 13
sl. 13
pk

WPA 23541 of 2022

State Bank of India
-Versus-
The State of West Bengal & Ors.

Mr. Pijush Kanti Ray,
Mr. Soujanya Bandyopadhyay
...for the petitioner

Mr. Srijib Chakraborty,
Ms. Sushmita Ghosh,
Mr. Parashar Baidya,
Mr. D. Kar
... for the respondent nos. 7 and 8.

Ms. Sushmita Ghosh, learned advocate appearing for the respondent nos. 7 and 8 has made detailed arguments opposing the writ petition. She argues that the order under Section 14 of the SARFAESI Act was passed by the District Magistrate on 10.03.2017. The bank did not take steps for taking physical possession until September, 2021. The writ petition was filed on 16th September, 2022. There is unexplained and inordinate delay on the part of bank approaching the Writ Court for enforcement of the order of the District Magistrate.

No relief should, therefore, be granted to the bank in the instant writ petition applying principles of delay, laches and dicta of the

Hon'ble Supreme Court as laid down in paragraph 21 of the decision in the case of **State of Madhya Pradesh and another Vs. Bhailal Bhai** reported in **AIR 1964 SC 1006**.

It is further argued by Ms. Ghosh that the proviso to Section 14 of the SARFAESI Act, 2002 lays down that the District Magistrate is required to dispose of application under Section 14 of the said Act maximum within a period of sixty days. It must, therefore, be interpreted that the entire process of taking possession of the secured asset must be completed under Section 14 of the said Act within such sixty days. The order of the District Magistrate dated 10.03.2017 has, therefore, lapsed. There is therefore no order in law for the Writ Court to enforce.

This Court has carefully considered the argument of the learned counsel of the borrower. The arguments are indeed attractive. The upshot of the decision of the Supreme Court in the case of **State of Madhya Pradesh and another Vs. Bhailal Bhai** (Supra) is that relief under Article 226 of the Constitution of India is granted where there are no deliberate or willful delay or laches on the part of the petitioner in seeking relief. In the said case the issue was whether a claim for refund of cess duly imposed on tobacco by the State of Madhya Pradesh could have been entertained and allowed by the High Court despite inordinate delay.

The High Court had allowed the writ petition. The Hon'ble Supreme Court, however, reversed the decision of the High Court and found that the respondents assesses therein were guilty of inordinate delay in approaching the High Court despite having knowledge that levy on them was illegal and without authority of law.

In the instant case, one has to look at the delay in the context of the object and purport of the SARFAESI Act, 2002. The Act itself has been brought into force to expedite the recovery process of banks and financial institutions.

The effect of taking physical possession of the secured asset would amount dispossession of a person occupying it. Such dispossession may have consequences on the borrower and/or the mortgagor. The borrower in the instant case has not only benefitted from the delay on the part of the bank but has also not repaid the dues of the bank till date and also avoided payment of the bank's dues till date.

In the backdrop of the benefit obtained by the borrower by delay in bank's execution and/or enforcement of the order under Section

14 of the Act of 2002, this Court is of the clear view that it does not lie in the mouth of the borrower to complain of any delay in enforcement of the order under Section 14 of the Act of 2002. It is not as if the borrower was ever ready or willing to pay the bank's dues.

It is common knowledge that there is a regular bargain by borrowers and/or defaulters with the lender for reduction of money payable to the bank. The borrower has sought time from the bank and has been negotiating quantum of dues payable as on November 12, 2022 and has offered a sum of Rs.2 crore. The said offer was rejected by the bank in November itself since the outstanding dues were Rs.6.64 crore along with accrued interest upto 01.11.2010.

Further the bank had in September, 2021 requested the District Magistrate and S.P, South 24 Parganas to fix a date for taking possession of the secured assets.

This Court is of the view that the bank is not guilty of any inordinate delay in seeking execution of the order under Section 14 of the Act, 2002. The petitioner has been negotiating with the bank and the bank had entertained such negotiation. The borrower has not in any way been prejudiced and on the contrary he has been benefited. No right can also therefore accrue to the borrower by such delay. No such rights have been demonstrated in implementation of Section 14. The legislature in its wisdom has not chosen to prescribe any period of limitation for execution of an order passed under Section 14 of the SARFAESI Act, 2002. It would be inappropriate for a Court of law to either fix any such period or deny enforcement of orders obtained by the bank under Section 14 of the said Act.

This Court also in the facts of the case notes that the bank has not been completely sleeping over its rights. The bank had put in the costs for taking physical possession in October 2018 and had granted sufficient time to the borrower, in all probability on the latter's request, to repay its dues.

In view of the aforesaid discussion, this Court is of the view that the bank is entitled to enforce the order dated 10.03.2017 passed by the District Magistrate under Section 14 of the SARFAESI Act, 2002. The respondent nos. 2, 3 and 5 shall hand over physical possession of the secured asset/the property-in-question to the State Bank of India by arranging sufficient police force at 2.00 p.m. on 28.02.2023.

The writ petition is accordingly allowed and disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)