

9th October,
2023
(AK)
27

W.P.A 23524 of 2023

Mr. Avik Kumar Goswami and another
Vs.
The State of West Bengal and others

Mr. Partha Sarathi Bhattacharyya
Mr. Suddhasatva Banerjee
Mr. Supratic Roy
Mr. Shuvajit Roy

...for the petitioners.

Mr. Asish Kumar Guha
Mr. Rajendra Chaturvedi

...for the State.

Mr. Subhadeep Basak
Ms. Ranjabati Ray

...for the respondent no.3.

1. Learned senior counsel appearing for the petitioner contends that the petitioner became aware of a notice under Section 13(2) of the SARFAESI Act, 2002 issued by the respondent-Finance institution and issued a reply thereto on March 14, 2023 under Section 13(3A) of the said Act.

2. It is contended that the petitioner clearly pointed out in the said reply that one of the noticees late Uma Goswami had passed away on July 26, 2022 and, as such, the notice under Section 13(2) in the name of such dead person was vitiated.

3. However, without paying any heed thereto, a notice has been issued under section 14 of the SARFAESI Act,

2002 on September 22, 2023 which has now been challenged before this court.

4. It is contended that although the petitioners had already taken out an application under Section 17 of the 2002 Act which is now pending before the tribunal, the notice dated September 22, 2023 prompted the petitioners to file an interlocutory application before the tribunal on September 23, 2023.

5. It is submitted that apart from the fact that the entire proceeding is vitiated since one of the noticees was a dead person, the fact remains that the petitioners have already preferred a valid challenge before a competent forum which is now pending.

6. As such, the petitioners ought not to be non-suited prior to the hearing of the said application.

7. Learned counsel for the Bank contends that the petitioners were well-aware of the proceedings taken out by the Finance Institution.

8. In fact, the initial order under Section 14 was passed as long back as on July 14, 2023. The said order was subsequently corrected with regard to the name of the police station on September 14, 2023.

9. It is, thus, argued that this court ought not to interfere in the matter under Article 226 of the Constitution of India.

10. Although it has been contended by the petitioners that one of the noticees was a dead person, it transpires from the records that the said person, late Uma Goswami, was a guarantor.

11. The petitioners were the borrowers and, as such, are in a different capacity in respect of the debt than the deceased person. It cannot be said that the prior demise of the guarantor vitiates the entire notice under Section 13(2) of the SARFAESI Act, which was a precursor of the present action under Section 14, insofar as the petitioners are concerned.

12. In any event, the present petitioners were well aware of the proceedings initiated by the bank and had replied to it under Section 13(3A) of the Act as long back as on March 14, 2023.

13. The petitioners had even taken out an application under Section 17 of the Act but chose not to move any interlocutory application in connection therewith.

14. The same was done only after receipt of the notice of possession under Section 14 dated September 22, 2023.

15. If a premium is given to the petitioners merely in view of the pendency of a subsequently-filed interlocutory application, the same will open a flood-gate and all borrowers suffering measures under the SARFAESI Act would be taking advantage of a dual forum, despite an

equally efficacious remedy being available before the tribunal.

16. Thus, this court chooses not to interfere under Article 226 of the Constitution of India.

8. Accordingly, WPA 23524 of 2023 is dismissed with the expectation that the interim application of the petitioners filed before the tribunal in connection with their application under Section 17 of the SARFAESI Act, 2002 shall be taken up expeditiously for the purpose of passing interlocutory orders, preferably within seven days from the date of communication of this order to it.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)