

AD-16
Ct No.09
17.10.2023
TN

WPA No. 23840 of 2023

Papiya Majumder and others
Vs.
The State of West Bengal and others

Mr. Supratim Dhar,
Ms. Rituparna Ghosh,
Mr. Sourav Sardar

.... for the petitioners

Ms. Mousumi Pal,
Mr. Sk. Mustafi Rahaman

.... for the respondent nos.3 & 4

- 1.** The predicament of the petitioners is peculiar.
- 2.** The petitioners have a right to apply under Section 17 of the SARFAESI Act, 2002 which has been availed but cannot be moved due to the Kolkata Debts Recovery Tribunal, Bench-II lying vacant.
- 3.** Learned counsel for the petitioners submits that the petitioners have a strong *prima facie* case for hearing of the application under Section 17 but due to such situation, cannot get a protective order before the appropriate forum. In such circumstances, the petitioners cannot have a right without a remedy.

- 4.** Accordingly, even without entering into the merits of the respective contentions of the parties, the respondents are restrained by an order of injunction from finalizing the process of sale pursuant to the impugned sale notice till January 15, 2024 or until further order of the appropriate Tribunal, whichever is earlier.
- 5.** It is expected that the concerned authorities shall take steps immediately for manning Bench-II of the Kolkata Debts Recovery Tribunal and/or allocating the business of the said Bench to some alternative forum to provide adequate and appropriate remedy to all concerned.
- 6.** In the meantime, the petitioners shall be at liberty to approach the appropriate forum, as and when so designated, with the same reliefs as claimed herein.
- 7.** It is made clear that this court has not entered into the merits and it will be open to the Tribunal to decide all questions independently on their own merits, as well as to decide on the interim prayer, as and when made by the petitioners before the said Tribunal.
- 8.** The Tribunal shall also be at liberty to vacate, vary, modify, rescind or extend this order while

taking up the petitioners' prayer for interim order prior to the expiry of this order.

- 9.** WPA No. 23840 of 2023 is, accordingly, disposed of in the light of the above observations.
- 10.** There will be no order as to costs.
- 11.** 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.)