19 **Ct 237** ***rup***	**26.07.2023**	

CRR 3544 of 2015

Canara Bank & Ors.
Versus
State of West Bengal & Anr.

Mr. Manas Das Gupta,
Mr. Harpal Singh … for the petitioners.

Mr. Imran Ali,,
Mrs. Debjani Sahu. … for the State.

Affidavit of service filed by the petitioner be taken on record.

Leave to grant to amend the name of Syndicate Bank as Canara Bank.

Case Diary is produced.

This revisional application has been filed at the instance of Canara Bank and its officials with a prayer for quashing the entire proceedings in connection with charge-sheet No. 52 of 2013 dated 31.10.2013 under Sections 447/ 380/ 406/ 420/ 409/ 120B of the Indian Penal Code arising out of Mejia Police Station Case No. 06 of 2008 dated 15.02.2008.

Brief facts of this case is that the borrower/private opposite party no.2 failed and neglected to pay the outstanding dues of the petitioner/bank in spite of repeated reminders and persuasion for which petitioner/bank served notice under Section 13(2) of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as the SARFAESI Act) and by that demand notice borrower and the guarantors were directed to repay a sum of Rs. 4,58,21,092.48P. as on 28.02.2007. Ultimately borrower and guarantors failed to pay the outstanding dues to the petitioner/bank in response to the notice under Section 13(2) of the SARFAESI Act, and no option left to the petitioner/bank to take possession of the mortgage properties, hypothecated assets in terms of Rule 8(1) of the said Act.

Thereafter, borrower moved before District Magistrate, Bankura with a prayer for restoration of the possession of the factory and that prayer was allowed and the order was communicated to the bank. Petitioner/bank challenged the said order before the Hon'ble High Court in writ petition No. 2296(W) of 2008 and the Hon'ble Court passed an order directing parties to maintain status quo with regard to assets of M/s. Tirupati Sponge & Steel.

Subsequently, private opposite party no.2 i.e. borrower filed one application under Section 156 (3) of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Bankura, which was registered as Misc. Case No.10 of 2008 and the same was referred to Mejia Police Station where the case was registered being No. 6 of 2008 dated 15.02.2008 under Sections 447/

323/ 380/ 406/ 120B of the Indian Penal Code and after investigation charge-sheet was submitted against the petitioners.

The said proceeding is under challenge.

Mr. Manas Das Gupta, learned advocate appearing on behalf of the petitioners, at the very outset, has referred to Section 32 of the SARFAESI Act and tried to make this court understand that no legal proceedings permitted to be taken out against the bank with regard to the issue of rights of secured creditor or borrower for anything done or omitted to be done in good faith under this Act.

Mr. Das Gupta further submitted that all issues raised in this application under Section 156(3) of the Code of Criminal Procedure cannot be decided by any criminal court as it is exclusive domain of Debt Recovery Tribunal.

Mr. Das Gupta relied on a decision in the case of ***K. Virupaksha and Anr. vs. State of Karnataka and Anr***. reported in ***(2020) 4 SCC 440*** wherein Hon'ble Apex Court laid down the principles as follows:

> *14. The issue, however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset, the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the parties. The complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by Canara Bank in that regard. The loan admittedly was sanctioned on 16-3-2009. When at that stage the amount was released and if any amount was withheld, the complainant was required to take appropriate action at that point in time and avail his remedy. On the*

other hand, the complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on 15-1-2013. Initially, the issue raised was only with regard to the undervaluation of the property when it was brought to sale. On that aspect, as taken note, the writ proceedings were filed and the learned Single Judge having examined, though did not find merit had reserved liberty to raise it before DRT, which option is also availed. It is only, thereafter, the impugned complaint was filed on 20-5-2016.

15. The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in Indian Overseas Bank v. Ashok Saw Mill wherein it is held as hereunder:

34. The provisions of section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36.The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare

> *any such action invalid and also to restore possession even though possession may have been made over to the transferee.*
>
> *37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submission advanced by Mr. Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.*

Alternatively, Mr. Das Gupta submits and refers to the documents showing compromise between the parties after payment of all dues by the borrower as it appears from the letter dated 13.01.2009 issued by the respondent/company addressed to the Manager to the bank clearly showing payment of all dues of Rs. 3 Crores 4 lacs by the borrower on 29th December, 2008 i.e. after filing of the application under Section 156(3) of the Code of Criminal Procedure, not only that, bank also issued no dues letter to the borrower.

Mr. Imran Ali, learned advocate appearing on behalf of the State has submitted that though bank can take possession of the mortgage property but here in this case costly articles were stolen by the bank authority and accordingly chargesheet was filed against the petitioners.

On careful perusal of the entire materials on record as well as the Case Diary, particularly the order passed by the Co-ordinate Bench of this Hon'ble Court in writ petition No. 2296 (W) of 2008 I find that liberty was given to the petitioner/bank to cause inventory of the assests lying at the factory of M/s. Tirupati Sponge & Steel Limited upon notice to the Offficer-in-charge, Mejia Police Station and the opposite party no.2 of this petition.

Therefore, the issue of alleged theft has already been discussed and decided by the Hon'ble Court in writ petition No. 2296 (w) of 2008.

It is an admitted position that the petitioners took possession of Tirupati Sponge & Steel Limited to satisfy the unpaid loan under the SARFAESI Act. More over, the dispute regarding non-payment of all dues has already been resolved between the parties as it appears from the letter dated 24th December, 2008 of the petitioner/bank as well as letter dated 13.01.2009 of borrower.

In the aforesaid view of the matter, I cannot restrain myself to refer a decision of Ho'ble Apex Court in ***Parbatbhai Aahir & Ors. vs. State of Gujarat & Anr***. reported in ***(2017) 9 SCC 641*** wherein Hon'ble Court observed that criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

In our case, the dispute between the parties with regard to the realisation of loan and parties have settled the dispute among themselves. More so, the issues raised in this case are within the exclusive jurisdiction of Debt Recovery Tribunal.

For the reason, the proceeding in connection with chargesheet No. 52 dated 31.10.2013 under Sections 447/ 380/ 406/ 420/ 409/ 120B of the Indian Penal Code arising out of Mejia Police Station Case No. 06 of 2008 dated 15.02.2008 in connection with G.R. Case No. 104 of 2008 pending before the Special Court, Bankura stands quashed.

With the aforesaid observation, the revisional application stands disposed of.

Connected applications, if there be any, also stand disposed of.

Case Diary be returned.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

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

(Bibhas Ranjan De, J.)