

D/L. 10.
November 24, 2023.
MNS.

WPA No. 26181 of 2023

Smt. Chanchala Biswas
Vs.
Bank of Baroda and others

Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee

... for the petitioner.

Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
Ms. Shreya Deashi

...for the respondent-Bank.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner argues that the petitioner has preferred a challenge against the action of the Bank under Section 13 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) against the respondent no. 3-borrower. An application under Section 17 of the SARFAESI Act, 2002 is pending at the behest of the petitioner before the Debts Recovery Tribunal No. 2, Kolkata. However, the concerned Bench, that is, the Second Bench,

is not functioning. As such, the petitioner pleads benefit of *ubi jus ibi remediem*.

3. Learned counsel further submits that the petitioner purchased the property from the borrower in the year 2017-2018 by two sale deeds. The purchased property of the petitioner, it is submitted, was to the tune of 2.482 decimals, which was demarcated out of 8 decimals property of the borrower.
4. Learned counsel for the petitioner argues that the vendor of the petitioner, that is, the borrower inherited about 3.3 decimals of property and was gifted 4.6 decimals of property, the latter being the subject matter of the mortgage with the Bank. However, the Bank, while taking possession, has not taken due care to demarcate the exact portion of the property and has also encroached upon the property of the petitioner.
5. Since the petitioner does not have a present remedy before the Tribunal, it is submitted that the sale, which is scheduled to be held today, be withheld.
6. Learned counsel appearing for the Bank hands over relevant documents and indicates that valuation has been duly made while

taking possession. That apart, the mortgage with the Bank was entered into by the borrower in the year 2015, that is, much prior to purchase of the property by the petitioner. A copy of the title deed of the mortgaged property indicates that the subject matter of the said deed was clearly demarcated by a sketch-map as well as specific boundary and description.

7. Moreover, due inventory and valuation were made at the time of taking possession, which negates the allegation of the petitioner that the Bank did not demarcate the property prior to taking possession.
8. In such view of the matter, it is submitted that the petitioner does not have any *prima facie* case to get any interim order.
9. Upon a *prima facie* hearing, it transpires that the petitioner has a very weak *prima facie* case, if any at all, since the mortgage was effected prior to the petitioner's purchase and the bank apparently complied with due formalities in taking possession.
10. However, keeping in view the fact that the petitioner has duly approached the concerned Tribunal, the scope of adjudication before

which is both on law as well as facts, which is not the case in the present application under Article 226 of the Constitution of India, which is on a higher footing, a limited protection is required to be given to the petitioner, till the petitioner can take appropriate steps for getting the matter transferred to some other Bench for the purpose of hearing the interim prayers.

11. Accordingly, WPA No. 26181 of 2023 is disposed of by directing the Bank to go ahead with the auction sale fixed today. However, the respondent-Bank shall remain restrained from issuing any sale certificate, if a sale goes through by virtue of such auction sale, till December 22, 2023 or until further order, whichever is earlier, as passed by the concerned Tribunal.

12. Liberty is given to the petitioner to approach the appellate Tribunal for allocation of the petitioner's application under Section 17 of the SARFAESI Act, 2002 along with interlocutory applications/prayers, if any, to a different functioning Bench in the meantime.

13. If such an approach is made by November 30, 2023, the appellate Tribunal shall immediately

decide the same and allocate the matter of the petitioner to some other functional Bench than DRT II for the purpose of enabling the petitioner to make appropriate interim prayers.

14. It is further made clear that the protection given herein is on an *ad hoc* basis and it will be fully open to the concerned Tribunal to decide the prayers of the petitioner both at an *ad interim* level and at the final stage independently on its own merits without being influenced in any manner by any of the observations made herein.

15. There will be no order as to costs.

16. 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.)