11th December, 2023
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W.P.A. 26592 of 2023

Uday Chand Das
Vs.
Central Bank of India and others

Mr. Emon Bhattacharyya
Ms. Pooja Saha
...for the petitioner.

Mr. Om Narayan Rai
Mr. Shaswat Nayak
...for the respondent no.1/Bank.

1. Learned counsel for the petitioner submits that the petitioner's property was taken by the Bank unlawfully although the petitioner had not borrowed any money from the Bank.

2. Subsequently, the petitioner had obtained orders from the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal in his favour directing the Bank to return the property to the petitioner.

3. However, the Bank is not doing so, for which the present writ petition has been preferred.

4. Learned counsel appearing for the respondent-Bank places reliance on Section 19(25) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 read with Section 17(7) of the SARFAESI Act and submits that in terms of the latter provision, the modalities of Section 19(25) of the 1993 Act applies to cases as the present one.

5. In any event, the appropriate forum for the petitioner would be to approach the concerned tribunal.

6. Learned counsel for the respondent-Bank places reliance on *Union of India and another Vs. Paras Laminates (P) Ltd.* reported at *(1990) 4 SCC 453* as well as *State of Karnataka vs. Vishwabharthi House Building Coop. Society and others* reported at *(2003) 2 SCC 412* in support of such proposition.

7. A perusal of the provisions cited by learned counsel for the petitioner indicates that Section 19 operates in respect of orders obtained by the Banks and Financial Institutions and not the borrower or a third party affected by any action of the Bank.

8. Even if it is construed that Section 17(7) of the SARFAESI Act enables applicability of Section 19(25) of the 1993 Act to SARFAESI proceedings, the same does not aid the proposition sought to be advanced by the Bank as there is no specific provision for implementation of the orders as in the present case within the four corners of the two statutes.

9. However, a stronger chord has been struck by the respondent-Bank by citing the propositions laid down by the Supreme Court in the cited reports.

10. In *Paras Laminates (supra),* the Supreme Court categorically observed that the Tribunal functions as a court within the limits of its jurisdiction and has all the powers conferred expressly by the statute.

11. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.

12. It was further observed that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.

13. Again, in *State of Karnataka (supra),* the Supreme Court went on to observe that it is well-settled that the cardinal principles of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

14. If such proposition is read into the stipulations of the SARFAESI Act, it is indeed correct and trite proposition of law that the Tribunal has every power to implement its own orders. As such, the petitioner could also obtain the order sought here before the Tribunal.

15. However, since the petitioner has spent money and resources as well as time to take the trouble of preferring a writ petition, in view of the non-availability of any specific provision in the concerned statute, it may very

well be deemed that the petitioner was unaware of the remedy which was available before the Tribunal, even by application of due diligence befitting a reasonable person.

16. Hence, as there is no disputed question of identity of the property involved, instead of relegating the petitioner to the Tribunal, the respondent no.1-Bank is required to be directed at least in this matter to implement the orders of the Debts Recovery Tribunal as well as the Appellate Tribunal.

17. However, such action of the Bank will be subject to the outcome of the revisional application preferred by the Bank against the order of the appellate forum.

18. Accordingly, WPA 26592 of 2023 is disposed of by directing the respondent no.1-Bank, that is, the Central Bank of India to return the property of the petitioner which was taken possession of by the Bank in terms of the orders of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal at the earliest, positively within three weeks from date.

19. It is, however, made clear that such return of possession shall be subject to the outcome of the revisional application pending at the behest of the Bank before a different Bench of this court.

20. It is further clarified that this order shall not set a precedent for future actions of similar nature by persons similarly placed as the petitioner, since in view of the cited judgments, such petitioners have an equally

efficacious remedy before the appropriate Tribunal to have the order of the Tribunal implemented in due course of law.

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.)