

AD-04
Ct No.09
01.12.2023
TN

WPA No. 26800 of 2023

Smt. Shanti Jaiswal and another
Vs.
The Branch Manager, IDFC First Bank Limited
and others

Mr. Dhiraj Trivedi,
Mr. Nilotpal Chowdhury,
Mr. Prabir Bera

.... for the petitioners

Mr. Amar Singh,
Mr. Tutul Das,
Mr. Ranjit Singh,
Ms. Pragya Barua

.... for the respondent nos.1 & 2

Mr. Anand Farmania,
Mr. Sanatan Panja,
Mr. Dip Jyoti Chakraborty

.... for the State

1. Learned counsel for the petitioners argues that although an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (hereinafter referred to as “the SARFAESI Act, 2002”) was passed on October 04, 2023 in respect of the petitioners’ property, a notice under the said provision was only affixed on November 21, 2023, which is beyond the forty-five days contemplated in the statute.

- 2.** The petitioners argue that the property sought to be attached is the petitioners' property and was never a part of the secured assets. As such, the entire SARFAESI action is vitiated vis-à-vis the petitioners' property.
- 3.** However, due to paucity of time, it is submitted that the Debts Recovery Tribunal could not be approached. The petitioners seek leave to approach the said Tribunal and an interim protection in the meantime.
- 4.** Heard learned counsel for the parties.
- 5.** Since no affidavits are directed, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.
- 6.** In view of the innocuous nature of the prayer, however, the matter is not intended to be retained further on the list.
- 7.** Accordingly, WPA No. 26800 of 2023 is disposed of by restraining the respondent-Bank from taking any coercive action against the petitioners on the basis of the order dated October 04, 2023 passed in connection with Miscellaneous Case No. 149 of 2023 under Section 14 of the SARFAESI Act, 2002 till December 15, 2023 or until further order which may be passed by the appropriate Tribunal if so approached.

- 8.** The petitioners shall in the meantime approach the concerned Debts Recovery Tribunal with an appropriate application under the said Act seeking interim relief as well. If such an application is filed by December 06, 2023, the same will positively be taken up for the purpose of deciding ad-interim prayers by December 12, 2023.
- 9.** It is made clear that the merits of the matter has not been gone into and it will be open to the Tribunal to decide all questions, at the interim stage as well as at the final stage, without being influenced in any manner by the above order.
- 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.)