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21.12.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28786 of 2023

Kanai Charan Panda & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri,
Ms. Tithi Mazumder,
Mr. Rajesh Naskar
...for the petitioners

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee
...for the State

Mr. Om Narayan Rai
...for the State Bank of India

1. Learned counsel for the petitioners submits that the petitioner no. 1 is suffering from a terminal illness. The petitioner no. 2 is his son and has been impleaded since the petitioner no. 1 is not in a position to properly monitor the litigation.
2. The petitioner no. 1 is the proprietor of a particular concern, which took a loan from the respondent-Bank. Subsequently, the petitioner no. 1 having failed to repay the same, the Bank obtained an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The order, it is submitted, was passed as long back as on March 11, 2022,

although it is misprinted in the certified copy of the order annexed to the writ petition as 11th March, 2021.

3. Subsequently, the petitioner made several offers for settlement of the loan. Initially an offer of Rs.40 lakhs was made. Thereafter, a higher amount was agreed upon.

4. However, the petitioners having failed to meet the terms of the one-time-settlement, the Bank gave a letter dated August 02, 2023 indicating that the Bank would initiate such other actions including action under the SARFAESI Act or other legal proceedings as the appropriate authority of the Bank deems necessary.

5. Learned counsel argues that the said communication regarding proposed further action automatically indicates that the Bank waived its previous order obtained under Section 14 of the 2002 Act.

6. Learned counsel places reliance on an unreported Division Bench judgment of the Bombay High Court in *L & T Finance Limited vs. The State of Maharashtra & Ors.* where, *inter alia*, where it was observed that every order passed under Section 14 of the SARFAESI Act should be implemented and executed not later than four weeks from the passing of the order.

7. Learned counsel also argues that the Supreme Court has observed in certain cases that the orders under Section 14 of the 2002 Act have to be implemented as expeditiously as possible, if possible immediately. Having not been so done, it is argued, the Bank cannot now fall back upon the order passed in 2022 under Section 14 of the 2002 Act and implement the same.

8. It is also reiterated that the petitioner no. 1 is suffering from Cancer and a breathing space is at least required for the petitioners.

9. Heard learned counsel for the parties.

10. It is evident that the order under Section 14 of the 2002 Act in the instant case was passed on March 11, 2022. Even going by the ratio of the judgment cited by the petitioners, the purpose of the statute is to expedite recovery and possession, which is a corollary of such recovery.

11. The ratio laid down by the Division bench judgment of the Bombay High Court does not favour the borrower, rather, it indicates that the SARFAESI action should be concluded as expeditiously as possible. The Supreme Court observations are in similar context.

12. Insofar as the letter dated August 02, 2023 is concerned, the Bank only indicated that it would take further action under the SARFAESI Act.

However, by no stretch of imagination can such communication be deemed to be a waiver of the previous order already passed under Section 14 of the SARFAESI, 2002.

13. Keeping such matters in view, there is no scope for the petitioners to resist the order under Section 14 of the 2002 Act passed against the petitioners.

14. However, keeping in view the physical condition of the petitioner no. 1 and his serious ailment, some breathing space ought to be given to the petitioners to vacate the premises.

15. However, when the order is being passed, learned counsel for the petitioners points out that there is some misunderstanding on the part of the Court insofar as the petitioners do not seek to vacate the premises but to repay the amount due to the Bank.

16. Further chance cannot be given to the petitioners on such count, since ample opportunities have been given to the petitioners. Even after the Bank having taken recourse to Section 13(2) and, thereafter, Section 13(4) of the SARFAESI Act and, ultimately, having obtained an order under Section 14 as long back as on March 11, 2022, the petitioners have not yet been able to repay the loan amount along with interest to the Bank. Rather, the conduct of the petitioners

betrays the intention of the petitioners to evade the loan. Despite the Bank having agreed once to the one-time-settlement offered by the petitioners, they failed to service the same for which the Bank had to adopt the methodology of seeking to implement the order under Section 14 of the 2002 Act.

17. Hence, in such circumstances, no further time can be granted to the petitioners.

18. Accordingly, W.P.A. No. 28786 of 2023 is dismissed on contest.

19. There will be no order as to costs.

20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)