

27.12.2023
Item No.04 (Suppl.)
Court No.7.
J.B./ b.das

WPA 29230 of 2023

**Kamal Stores & Anr.
Vs.
Punjab National Bank & Ors.**

Mr. Nimesh Mishra
Mr. Gaurav Singh ...for the petitioners.

Mr. Subrata Guha Biswas
Mr. Joydip Basu ...for the State.

Mr. Abhishek Banerjee(VC) ...for the Bank.

Affidavit of service filed on behalf of the petitioners is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. A proceeding was initiated under Section 14 of the SARFAESI Act against the petitioners. Being aggrieved by the Magistrate's order, the petitioners challenged the same before the Kolkata Debt Recovery Tribunal No.II. On 21.12.2023 when the matter was taken up for hearing, learned counsel for the Bank sought time to put forward his reply. That is why the application for stay of the impugned order could not be decided. The next date was fixed on 15th January, 2024. Taking advantage of this situation, the Bank and the police authorities have gone to the doorstep of the petitioners

to execute the Magistrate's order. Upon instructions it is submitted that possession has not yet been taken.

Learned counsel appearing on behalf of the respondent Bank denies the allegation and submits that possession has already been taken.

Learned counsel appearing for the State, on the other hand, submits that the police was in the process of helping the bank in taking possession in terms of the Magistrate's order.

It is beyond doubt that a proceeding under Section 14 of the SARFAESI Act may not be ordinarily interfered with by this Court.

However, in the instant case, it appears that the Tribunal was practically taken for a ride by the respondent Bank. The moment the petitioners had prayed for stay of operation of the impugned order passed by the Magistrate, learned counsel for the Bank sought time. The matter was adjourned till 15th January, 2024.

In all fairness, the Bank and the police authorities should not have taken steps for taking possession of the assets before 15th January, 2024, thus trying to render the whole exercise before the DRT redundant on the next date. Yet, they have chosen to do the same.

Therefore, such a sharp practice of the respondent authorities needs to be interfered with.

If the possession of the assets has not been taken today, that is on 27.12.2023 as on 16.05 hours, the respondents shall be restrained from doing so till the next date of hearing before the Tribunal, that is, on 15th January, 2024. In the event possession has already been taken, the petitioners shall be at liberty to make appropriate prayers before the learned Tribunal in this regard.

Learned advocates on record of the parties shall be at liberty to communicate a gist of the order to the Competent Authority.

All points are kept open to be decided before the learned Tribunal.

With these observations, the writ petition being WPA 29230 of 2023 is, accordingly, disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Jay Sengupta, J.)