05-04-2023
Court No.2
Sh/57.

**In The High Court At Calcutta**
**Jalpaiguri Circuit Bench**

**W.PA. 531 of 2023**

State Bank of India & Anr.
-Vs-
District Magistrate, Darjeeling & Ors..

Mr. Milindo Paul,
Mr. Nabankur Paul,
Ms. Bedashruti Bose.
..For the Petitioners.
Mr. Hirak Barman,
Mr. Momenur Rahaman.
.. For the State.
Mrs. Supriya Singh,
Mr. Rahul Mishra.
For the respondent nos.2,3,4,5,6 & 7.

Affidavit of service filed in Court today be taken on record.

Through this writ petition the petitioners being the secured creditors in respect of a **secured asset/interest being the immovable property described at paragraph 5 to the writ petition**, had challenged the undated impugned order at **page 242** to the writ petition, which was communicated to the petitioners by the respondent no.1 through its forwarding letter dated April 7, 2022.

The petitioners granted loan in favour of the respondent no.2 and the respondent nos.3 to 7 stood as guarantors. The borrowers and the guarantors defaulted. The first petitioner initiated the recovery proceeding under Section 19 of the **Debts due to Banks and Financial Institution Act, 1993 ( in short 1993 Act).**

The said recovery proceeding ultimately culminated into a compromise decree and certificate dated June 12, 2019, **annexure P-10 at page 216 to the writ petition.**

In the said compromise certificate the borrowers agreed to pay a total sum of **Rs.3,65,32348=00** in the manner and mode described in the said compromise certificate. The borrowers consequently did not comply with the compromised terms and defaulted. The Bank initiated recovery proceeding under the said 1993 Act, which was registered as RC/8/2021 before the learned Debts Recovery Tribunal-Siliguri ( in short DRT)

The recovery officer on January 24, 2022 passed an order, **annexure P-15 at page 238 to the writ petition,** whereby and where under the **Deputy Commissioner of Police Siliguri was directed to deploy adequate police personnel for physical attachment of the property**. The learned receiver and the certificate holder bank were directed to liaise with the police department for ensuring physical attachment of the property. The certificate debtors were directed to cooperate with the certificate holder Bank and learned receiver during the physical attachment of the property.

Mr. Nabankur Paul, learned counsel appearing for the petitioners submitted that, the matter is still lying pending at that stage only.

The petitioners thereafter in exercise of their right under the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002** ( in short **Sarfaesi Act**) issued notice under Section 13(2) and 13(4) of the **Sarfaesi Act** to take steps and measures in respect of the secured asset/interest being the immovable property as more fully and particularly stated in **paragraph 5** of the writ petition.

Mrs. Supriya Singh, learned counsel appearing for the respondent nos.2 to 7 submitted that, the borrowers/creditors filed proceeding under **Section 17** of the **Sarfaesi Act** before the jurisdictional DRT which was registered as S.A 45/2022, the same is still pending.

In exercise of power under Section 14 of the **Sarfaesi Act** the petitioners applied before the jurisdictional District Magistrate by way of an application dated August 9, 2021, **annexure P-12 at page 225 to the writ petition** since the secured creditors were unable take physical possession of the secured assest/interest. On the saidapplication filed by the secured creditors/petitioners the impugned order was passed.

Mr. Hirak Barman, learned State counsel represented the respondent no.1.

Learned counsel for the petitioners submitted that, the said application of the petitioners filed under Section 14 was not considered strictly in accordance with law when the respondent no.1 disposed of the application, *inter alia*, observing that the authority/applicant stated that the case has been referred to and decided by the DRT, hence the order of DRT dated January 24, 2022 is to be followed and the case was dropped.

After considering the rival contentions of the parties and on perusal of the materials on record and after reading the relevant provisions of both **Sarfaesi Act** and the said **1993 Act**, it appeared to this Court that, the scope of the said two Statues are different from each other. The 1993 Act was promulgated for the recovery of dues with consequential reliefs by a secured creditors from its different defaulted borrowers. The **Sarfaesi Act** was promulgated empowering the secured creditors to exercise its right against the secured asset/interest on which the loan was granted and the borrowers defaulted. The compromise certificate dated June 12, 2019 was issued by the jurisdictional DRT, **annexure P-10 at page 216 to the writ petition** and the necessary recovery proceeding was initiated. The recovery officer is now with the jurisdiction to execute that certificate in accordance with the procedure laid down under the said 1993 Act and the rules thereunder and he had already passed an order, **annexure P-15 at page 238 to the writ petition.** The petitioners being the secured creditors are free to proceed with the same without any fetter.

The order impugned at **page 242** to the writ petition passed by the respondent no.1 in exercise of its jurisdiction under **Section 14** of the **Sarfaesi Act** is an independent order under a different provision of law and was passed in an independent proceeding, without having any nexus or connection with that of the said order passed by the Recovery Officer at **page 238 to the writ petition.**

It is equally true that, the respondent no.1 in exercise of its power under Section 14 might have directed the jurisdictional police authority to take steps in accordance with the procedure prescribed under Section 14 of the **Sarfaesi Act**, but since the police authority had already been directed by the learned Recovery Officer in terms of the provision under the said 1993 Act, he thought it fit not to give an identical direction in the matter.

The cause of action under Section 14 of the **Sarfaesi Act** is a continuous cause of action, it shall occur every day. Every day when the secured asset cannot be taken in possession by the secured creditors, it gives a fresh cause of action to the secured creditor to apply under **Section 14** of the **Sarfaesi Act**.

For the foregoing discussions and reasons, the petitioners shall be at liberty to apply afresh before the jurisdictional District Magistrate in accordance with law and in the event such a proceeding is taken out by the petitioners, the jurisdictional District Magistrate shall deal with the same and shall come to a logical conclusion strictly in accordance with law in exercise of its power under **Section 14** of the **Sarfaesi Act**, but positively within a period of one month from the date of receiving such an application, if the petitioners will file the same.

Since affidavits are not called for the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this Court has not gone into the merits of the claims and rival claims of the parties in this writ petition in any manner and the parties shall be at liberty to urge whatever points they wish to urge in accordance with law, in the event the petitioners initiate the proceeding under **Section 14** before the jurisdictional District Magistrate.

In as much as, any observation made by this Court shall not influence the jurisdictional District Magistrate, if any application is taken out by the Bank under **Section 14 of the Sarfaesi Act and** he shall apply his independent mind strictly in accordance with law without being influenced by any observation made by this Court.

With the above observations this writ petition, **WPA 531 of 2023** stands disposed of without any order as to costs.

**( ANIRUDDHA ROY, J.)**