

AP/308/2023

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
(Commercial Division)

UGRO CAPITAL LTD.  
Versus  
M/S. ANNAPURNA WOOD SUPPLIER AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 6<sup>th</sup> July, 2023.

Appearance:

*Mr. Ritoban Sarkar, Adv.*

*Ms. Tutul Das, Adv.*

*Ms. Pooja Sett Chakraborty, Adv.*

*Mr. Ranjit Singh, Adv.*

*...for the petitioner*

*Mr. Joydip Banerjee, Adv.*

*Mr. Samrat Dandapat, Adv.*

*...for the respondents*

The Court: This is a post-award Section 9 application filed by the lender who had lent Rs.30.71 lakhs to the respondents in terms of a loan agreement dated 28<sup>th</sup> September, 2021.

The petitioner alleges default of the payment schedule on the part of the respondents and seeks appointment of a Receiver for taking physical possession of a land belonging to the respondents at Ranaghat, District Nadia.

Learned counsel appearing for the respondents hands up a possession notice dated 27<sup>th</sup> May, 2023 in terms of Section 13(4) of the SARFAESI Act, 2002, pursuant to proceedings initiated by the petitioner under the said Act. The persons named in the possession notice are the respondents before the Court. It is also admitted that the possession notice is of the land at Ranaghat

which the petitioner seeks to take possession of in the present proceedings through a Receiver.

Learned counsel appearing for the petitioner submits that the petitioner was constrained to file the present application since the petitioner met with resistance at the time of implementing the effect of the Section 13(4) notice under the SARFAESI Act.

This Court is of the view that Section 9, whether pre, during or post award, is a right given to a petitioner for securing the subject-matter of the dispute. The presumption is that a petitioner approaches the Court for relief on the apprehension that the subject-matter of the dispute may be wasted or frittered away during the pendency of the dispute.

The present facts show that the petitioner had already availed of the statutory remedy under the SARFAESI Act, 2002 by seeking to implement a Section 13(4) notice. The present application under Section 9 cannot be used as an alternative method to implement what the petitioner has already obtained under the SARFAESI Act, 2002. The petitioner must complete its travel in the course charted under the SARFAESI Act, 2002 and avail of the remedies provided under the said Act.

AP/308/2023 is, accordingly, dismissed without any order as to costs.

(MOUSHUMI BHATTACHARYA, J.)