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WPO/1621/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SK ABDUL MAJED LAIQ
VS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 3rd October, 2023.

Appearance:
Mr. Shayak Chakraborty, Adv.
Mr. Shahriar Hossain, Adv.
Mr. Abdul Zahid, Adv.
. . .for the petitioner.

Mr. Anand Farmania, Adv.
Mr. Majoj Kr. Mondal, Adv.
. . .for the respondent.

Mr. Ashish Shah, Adv.
. . .for the respondent nos.2 & 3.

The Court: Learned counsel for the petitioner submits that the petitioner is an octogenarian and was dispossessed from his property by the respondent bank without prior service of any notice under Section 13(2) or 13(4) of the SARFAESI Act, 2002. It is contended that the apparent ground of such dispossession was that the property of the petitioner was mortgaged by a nephew of the petitioner, without any knowledge of the petitioner whatsoever.

It is submitted that since no steps were taken against the petitioner under Section 13 of the said Act, the petitioner does not have the remedy of approaching the Debts Recovery Tribunal under Section 17 of the said Act.

Learned counsel for the respondent bank controverts such submissions and contends that due notice was given under Section 13(2) and Section 13(4) of the SARFAESI Act to the petitioner himself.

Be that as it may, the facts involved in the present case include factual adjudication, for which prima facie evidence might be required to be looked into and assessed.

Since it is well settled that anybody aggrieved by any measure taken by a bank under Section 13(4) of the SARFAESI Act can approach the tribunal under Section 17 of the said Act, it is only appropriate for the petitioner to be granted leave to approach the said forum. The question as to whether the petitioner was served with any notice by the bank would, of course, be kept open to be decided, along with the other issues canvassed by the parties, before the Tribunal.

In order for the petitioner to prefer a meaningful challenge before the Tribunal, the learned advocate for the bank shall serve copies of the purported notices given under Section 13(2) and or Section 13(4) of the SARFAESI Act to his counterpart appearing for the petitioner in the course of this week.

Accordingly, WPO 1621 of 2023 is disposed of by granting liberty to the petitioner to approach the appropriate Debts Recovery Tribunal for ventilating the petitioner's grievances as canvassed herein. If so approached within October 13, 2023, the petitioner's application under Section 17 of the SARFAESI Act shall

be registered in due course of law by the Tribunal and duly adjudicated in accordance with law upon giving opportunity of hearing to both sides, if necessary adjudicating upon interim prayer,s if any, made by the petitioner in connection with such challenge.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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