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WPO/1677/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

STANDARD LEATHER PVT LTD AND ANR
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 4th October, 2023.

Appearance:
Mr. Suddhasatva Banerjee, Adv.
Mr. Daanish Haque, Adv.
Mr. Sayak Chakraborty, Adv.
Md. Zohaib Rauf, Adv.
Mr. Amartya Basu, Adv.
. . .for the petitioner.

Mr. Debangshu Dinda, Adv.
. . .for the State.

The Court: Affidavit of service filed today be kept on record.

None appears for the respondent bank.

The petitioner pleads a peculiar predicament. Although it is alleged that no steps were taken or notice served on the petitioner under Section 13(2) or Section 13(4) of the SARFAESI Act, 2002, an order was passed by the concerned Magistrate under Section 14 of the said Act, which has put the petitioner under the threat of eviction with regard to the petitioner's property.

It is submitted that when the petitioner attempted to approach the concerned Debts Recovery Tribunal, the petitioner's proposed application was not entertained by the Tribunal on the ground that no notice under Section 13(4) has been taken against the petitioner.

Such stand taken by the Tribunal is absurd. Section 14 of the 2002 Act begins with the expression "Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act....".

Hence, the question of invocation of Section 14 arises only upon the prior exhaustion of the provisions of the Act, obviously implying Section 13 of the 2002 Act. Thus, the moment an order is passed under Section 14 of the 2002 Act, it has to be presumed that there had to be a prior action under Section 13 of the said Act.

Section 17 of the SARFAESI Act, 2002 on the other hand, stipulates that any person (including borrower) aggrieved by any of the measures referred to in sub-Section (4) of Section 13 taken by the secured creditor or his authorised officer may make an application before the Tribunal under the said provision.

In view of the above discussion, an order passed under Section 14 presupposes previous steps under Section 13(4), which brings any challenge by any person aggrieved with an order under Section 14 also within the ambit of Section 17 of the said Act. Thus, the Tribunal refused to exercise jurisdiction vested in it by law in not entertaining the challenge under Section 17 of the 2002

Act at the behest of the petitioner despite the petitioner alleging that no notice under Section 13(4) was issued to the petitioner.

In such view of the matter, since the Tribunal is the appropriate authority to decide such questions of fact as well as law as raised in the present writ petition, WPO 1677 of 2023 is disposed of by granting liberty to the petitioner to approach the Tribunal with the challenge as preferred herein.

Such challenge shall be positively preferred by the petitioner within October 13, 2023.

There shall be an unconditional stay of operation of the order passed under Section 14 of the 2002 Act in respect of the petitioner's property till October 13, 2023. In the event the petitioner files such application under Section 17 of the 2002 Act before the concerned Tribunal on or before the October 13, 2023, the said order of stay shall automatically stand extended till November 30, 2023 or until further order which may be passed by the Tribunal. Liberty is given to the petitioner to seek interim reliefs in connection with the said challenge under Section 17 as well. It is made clear that it will be open to the Tribunal to vary, modify, rescind or extend the interim order passed herein, subject to hearing the petitioner.

If such an application is filed by the petitioner and the petitioner makes an application/ a prayer for interim/ad interim orders, such interim/ad interim prayer shall be heard and decided expeditiously by the Tribunal, preferably within a fortnight from the date of making such prayer.

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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