26th February, 2024
(AK)
23-24

W.P.A 463 of 2024

Mr. Biswajit Ghosh
Vs.
Punjab National Bank and others

With

W.P.A 17770 of 2022
IA No: CAN 1 of 2024

Punjab National Bank and another
Vs.
The State of West Bengal and others

Mr. Saunak Mukherjee
Ms. Sananda Ganguli
Mr. Shubradip Roy
...for the petitioner in WPA 463 of 2024 intervening party in WPA 17770 of 2022.

Mr. Abhishek Banerjee
Ms. Parna Roy Choudhury
...for the PNB.

Mr. Sankar Biswas
Ms. Ananya Adhikary
...for the respondent no.6 in WPA 463 of 2024 & respondent no.4 in WPA 17770 of 2022.

1. Learned counsel for the petitioner-Bank in WPA 17770 of 2022 contends that the District Magistrate refused to exercise jurisdiction vested in him by law by keeping the petitioner-Bank's application under Section 14 of the SARFAESI Act, 2002 pending.

2. The premise of the Magistrate, as reflected from the communications from the end of the Magistrate, is that apparently the petitioner-Bank is to produce the loan document concerned with regard to the borrower.

3. It was also observed in his communication by the District Magistrate that the classification of the borrower's account as NPA was bad.

4. The Magistrate sought to rely on certain judgments of the Supreme Court on such count.

5. At the outset, learned counsel for the respondent-Borrower takes an objection as to maintainability/jurisdiction of the court, in view of availability of a proper forum before the concerned tribunal against an order under Section 14 of the SARFAESI Act.

6. Learned counsel for the Bank submits that since no adjudication has yet been made by the District Magistrate, the question of preferring a challenge before the tribunal does not arise.

7. That apart, it is argued that the District Magistrate acted *de hors* jurisdiction in entering into the question of whether the NPA declaration was proper or not.

8. Learned counsel cites the judgment of *Balkrishna Rama Tarle and another vs. Phoenix ARC Private Limited and other* reported at *(2023) 1 SCC 662* in

support of the proposition that the District Magistrate cannot go into extraneous considerations on the merits of the matter while deciding an application under section 14 of the SARFAESI Act.

9. A bare perusal of the written communications of the Magistrate indicates that he palpably failed to exercise the jurisdiction vested in him by law in refusing to adjudicate the application of the Bank under Section 14 and dispose it of in accordance with the said Section.

10. The charter of the Magistrate under the said provision is merely confined to ascertain whether a proper affidavit and the points as enumerated in Section 14 have been disclosed by the Bank in proper format.

11. It is entirely beyond the scope of the consideration of the Magistrate to adjudicate on the merits of the dispute, far less to go into the question as to whether the classification of NPA by the Bank was proper or not.

12. Learned counsel for the respondent-Borrower seeks to place reliance on the judgment of *Gajendra Sharma vs. Union of India* reported at *(2021) 1 SCC 210* for the proposition that the Supreme Court had gone on extending the time limits for all transactions during the pandemic period.

13. In view of such extension of time, it is argued that the declaration of NPA of the petitioner's account gets automatically cancelled.

14. Although the declaration of NPA has been argued to be a nullity by the respondent-borrower, such proposition is contrary to the position of law.

15. The NPA declaration, once made, is amenable to challenge before an appropriate forum.

16. In fact, the respondent-Borrower could very well have approached the Debts Recovery Tribunal under the provisions of Section 17 of the SARFAESI Act by taking out a challenge to the action and measures taken by the Bank under section 13(4) of the Act and incidentally assail the classification of the NPA as bad in law.

17. Having not so approached, it does not lie in the mouth of the respondent-Borrower to argue on merits of the NPA classification at this stage.

18. The incumbent duty of the District Magistrate was to dispose of the Bank's application under Section 14 of the SARFAESI Act only within the confines of the said provision by ascertaining whether a proper application has been made by the Bank under the contemplation of Section 14 and not to go into the merits of the case.

19. Hence, **WPA 17770 of 2022 is allowed on contest**, thereby directing the respondent no.2 to

dispose of the pending application of the petitioner-Bank under Section 14 of the SARFAESI Act as expeditiously as possible in the light of the above observations, positively within three weeks from the date of communication of this order to the said District Magistrate.

20. The District Magistrate, for such purpose, shall act on a server copy of this order without insisting upon prior production of a certified copy thereof.

21. CAN 1 of 2024 also stands disposed of accordingly.

22. WPA 463 of 2024 is now taken up for hearing.

23. The primary prayer of the petitioner in this writ petition is that the Bank has not handed over possession of the property purchased by the petitioner in an auction sale from the Bank.

24. Consequentially, the petitioner seeks immediate handing over of possession of the property to the petitioner, alternatively refund of the consideration deposited by the petitioner.

25. Since by virtue of the disposal of WPA 17770 of 2022, the District Magistrate has been directed to take immediate steps for disposal of the Bank's application under Section 14 of the SARFAESI Act with regard to the self-same property, it cannot be said that the Bank was at fault, since it had till now challenged the inaction of the District Magistrate in

not handing over possession to the authorized officer of the Bank by way of the said writ petition which has been disposed of immediately before this order.

26. Hence, the prayer of refund made by the petitioner cannot be granted, as the delay in handing over possession cannot be attributed to the bank.

27. Insofar as the other grievance of the petitioner is concerned regarding handing over of possession, in view of the specific direction given on the concerned District Magistrate in the earlier writ petition to dispose of the Bank's application under Section 14, which includes within its fold handing over of possession of the property to the authorized officer of the Bank, such grievance also stands mitigated.

28. It is, however, expected that the Bank, immediately upon its authorized officer getting possession of the property, shall take steps for handing over the same to the present writ petition, that is, the auction purchaser, preferably completing such exercise within three weeks from the date of getting possession of the property.

29. In the event the writ petitioner has any further grievance with regard to the action taken by the Bank or on any aspect of the sale after getting possession of the property, it will be open to the

writ petitioner to challenge the same by way of an appropriate challenge.

30. WPA 463 of 2024 is, thus, disposed of accordingly.

31. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)