

D/L. 30.
February 21, 2024.
MNS.

WPA No. 655 of 2024

Swapan Ganguly
Vs.
Union Bank of India and others

Mr. Amitava Chaudhuri,
Mr. Debasish Saha,
Mr. R. Roy

... for the petitioner.

Mr. Pinaki Kumar Mukherjee,
Ms. Anindita Auddy

...for the Union Bank of India.

1. The present writ petition has been filed by a borrower challenging an order passed by the concerned District Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
2. It is submitted that an application under Section 17 of the SARFAESI Act is pending before the competent Tribunal in connection with which an application for stay of operation of the order of the District Magistrate was passed, which was, however, dismissed for non-prosecution since the petitioner was not represented on the said date.
3. It is contended that an application for recall of the said dismissal order has been filed by the

petitioner, which is scheduled to be taken up on March 1, 2024 by the Tribunal.

4. It is submitted that some breathing space may be given to the petitioner since the petitioner is about 76 years old.
5. Learned counsel appearing for the Union Bank of India controverts the contentions of the petitioner.
6. It is submitted that already an SA (application under Section 17 of the SARFAESI Act) is pending before the Tribunal. The petitioner has failed to get an order of stay in connection with the same and has been making applications of interlocutory nature repeatedly to stall the proceeding. Even another application was made by the petitioner challenging the auction sale notice, which was also dismissed by the Tribunal.
7. It is thus submitted that the present writ petition is frivolous and there is no ground of challenge to the order of the District Magistrate made out.
8. Hence, the writ petition is frivolous and ought to be dismissed.
9. A bare perusal of the writ petition indicates that indeed, there is no valid ground for challenge to the impugned order passed

under Section 14 of the SARFAESI Act by the District Magistrate.

10. However, since the petitioner has already preferred an application under Section 17 of the SARFAESI Act and for the ends of justice, requires an opportunity to move the interlocutory application in connection therewith, an amount of sympathy ought to be extended to the petitioner keeping in view the advanced age of the petitioner.

11. In any event, the petitioner's application challenging the auction sale notice was disposed of not on merits but being infructuous since the auction sale notice had failed to yield any result.

12. As regards the dismissal of the application for stay filed in connection with the SA by the petitioner, the same was dismissed for absence of the petitioner's counsel on the relevant date. An application for recall of the same is scheduled to be taken up on March 1, 2024 by the Tribunal.

13. Hence, in order to give some breathing space to the petitioner to effectively move the said application, WPA No. 655 of 2024 is disposed of by granting stay of operation of the order of the District Magistrate under Section 14 of the SARFAESI Act till March 4, 2024 or until

further order, subject to any order passed by the concerned Debts Recovery Tribunal.

14. It is, however, made clear that this order is being passed purely on an *ad hoc* basis in order to give some breathing space to the petitioner to move his application for recalling the order of dismissal of the stay application before the Tribunal and shall not, in any manner, be construed to be any sort of adjudication on the *prima facie* case and/or the rights and contentions of the parties.

15. The Debts Recovery Tribunal, while considering the petitioner's application for restoration as well as other applications along with the main Section 17 application, shall act independently and in accordance with law, being uninfluenced in any manner whatsoever by any of the observations made herein

16. It is expected that the parties shall act on the communication of the learned Advocates for the parties, coupled with a server copy of this order, without insisting upon prior production of the certified copy thereto.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)