

05.03.2024
Sl. No.14(DL)
srm

C.O. No. 260 of 2024

**M/s. ABS Computer & Electronics
Prop. Sri Amiyo Roy & Ors.**

Versus

**The Authorized Officer, Indian Bank,
Zonal Office, Barasat & Anr.**

Mr. Dhiman Ray,
Mr. Dip Chanda

...for the Petitioners.

1. The revisional application arises out of an order dated December 5, 2023 passed in IA No.3291 of 2023 by the learned Debts Recovery Tribunal-III, Kolkata. IA No.3291 of 2023 was filed in connection with SA No.210 of 2023.
2. The petitioner prayed for stay of the order of the District Magistrate, North 24-Parganas. The District Magistrate allowed possession of the secured asset on the application filed by the bank/secured creditor
3. The petitioner submits that the order passed by the learned tribunal suffers from jurisdictional error and this Court must intervene. In support of such contention it is stated as follows:-

- (a) The order impugned was passed without taking into consideration the fact that the bank had not replied to the representation of the borrower which was filed pursuant to receipt of the notice under Section 13(2) of the SARFAESI Act. The statutory mandate that the bank must reply to such representation was violated. Without any reply to such representation, the notices under Section 13(4) of the SARFAESI Act could not be issued.
 - (b) Two notices were issued under Section 13(4), which could not be permitted under the provisions of the SARFAESI Act.
 - (c) The information given by the bank to the District Magistrate were incorrect and instead of one SA, which was shown to be pending, two SAs were pending.
4. Having gone through the order impugned, it appears that the learned tribunal had taken into consideration the order of the District Magistrate and found that all the nine clauses for orders under Section 14 of the SARFAESI Act had been satisfied. The form of and contents of affidavit filed before the District

Magistrate were correct. The District Magistrate had been taken note of the said points. Secondly, the District Magistrate was doing a ministerial job and not discharging any quasi-judicial function.

5. Thus, determination of the propriety of the notices under Section 13(4) of the said Act, or the action taken for possession without having replied to the representation filed by the borrower, were not to be looked into by the District Magistrate. The interpretation of the judgment was not within the domain of the District Magistrate. The illegality in issuance of the notices under Section 13(4) had been kept open by the learned tribunal and for final hearing of the SA. The Tribunal found that there was no illegality in the order passed by the District Magistrate, North 24-Parganas. The prayer for stay was refused.
6. In my opinion, the order impugned is an appealable order and the petitioner is at liberty to prefer an appeal, in accordance with law.
7. I do not find that the order suffers from any error of jurisdiction or is perverse in anyway. The reasons given by the learned Debts Recovery Tribunal-III,

Kolkata may not be satisfactory, but such order should be assailed in the appeal which is an alternative statutory remedy. The Tribunal had appreciated the fact and the law and arrived at a conclusion. Mere correction of errors is not permissible under Article 227 of the Constitution of India. An order can be interfered with in very exceptional circumstances specially when the same is either without jurisdiction or had been passed for extraneous consideration upon taking into account evidence which was beyond the scope of the proceedings.

8. In the matter of *Punjab National Bank vs. O.C. Krishnan* reported (2001) 6 SCC 569 , the Hon'ble Apex Court held as follows:-

“6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the

Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.”

9. Accordingly, the revisional application is disposed of without any interference. The petitioner is at liberty to prefer an appeal in accordance with law.
10. There shall be no order as to costs.
11. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)