D/L.25.
March 7, 2024.
MNS.

WPA No. 3412 of 2024

Rabindranath Sarkar
Vs.
The State of West Bengal and others

Mr. Satrajit Sinha Roy,
Mr. Tapan Roy

… for the petitioner.

Mr. Asish Kumar Guha,
Mr. Anirban Dutta

…for the State.

Mr. Pankaj Kumar Mukherjee

…for the Punjab National Bank.

1. Supplementary affidavit along with affidavit-of-service filed in court today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner is a third party staking claim to a property from which he has been ousted under the direction of the concerned Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
3. Learned counsel for the petitioner argues that fraud was practiced on the Magistrate inasmuch as the previous *status quo* order

obtained by the petitioner from a Civil Court was suppressed from the Magistrate.

4. As such, it is argued that the said fraudulent act vitiates the order of the Magistrate.

5. The petitioner has been ousted, it is submitted, but his utensils and other materials are still lying in the property.

6. Learned counsel for the petitioner places reliance on the judgment of *Bank of Rajasthan Limited Vs. VCK Shares and Stock Broking Services Limited* reported at *(2023) 1 SCC 1* as well as *Vidur Impex & Traders Pvt. Ltd. and others Vs. Tosh Apartments* reported at *(2012) 8 SCC 384*.

7. It is argued that, as such, judicial propriety demands that the court should maintain its decorum and dignity and should not pass any order, which may well conflict with each other. Moreover, the borrower is entitled to file a civil suit as per the judgment of *Bank of Rajasthan* (supra).

8. Such contentions are controverted by learned counsel for the Bank, who also submits that the petitioner has in fact preferred a challenge under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, which is now pending. It is further argued that the

judgements cited by the petitioner are not applicable in the facts of the present case.

9. There is substance in the contention of the bank.

10. Inasmuch as the judgement of *Bank of Rajasthan (Supra)* is concerned, the same was rendered in the context of the Recovery of Debts and Bankruptcy Act, 1993 (1993 Act). The Supreme Court held that Section 17 of the said Act bars the jurisdiction of the civil court only in respect of applications filed by banks and financial institutions and not suits filed by the borrower.

11. However, in stark contrast to the said provision, Section 17 of the SARFAESI Act, which is the statute under which the present order under challenge has been passed, provides that any person (including borrower) aggrieved by any of the measures under Section 13(4) of the SARFAESI Act may approach the Debts Recovery Tribunal with his grievance.

12. The specific mention of the borrower as a contender in an application under Section 17 of the SARFAESI Act clearly shows that in contradistinction with the 1993 Act, the SARFAESI Act provides a channel of redressing grievance, which has been invoked

by the petitioner by filing an application under Section 17 of the SARFAESI Act.

13. Thus, the *Bank of Rajasthan* case does not come to the aid of the petitioner in any manner.

14. Insofar as the *Vidur Impex* (supra) is concerned, there is no question of judicial propriety involved here, since there is no conflict of decision in the present case.

15. First, the suit pending in the Civil Court, where the *status quo* order was passed at the instance of the petitioner, is between the petitioner and another individual, where the bank is not a party at all. Thus, whatever order is passed in the said proceeding does not in any manner operate against or bind the bank. Even if the petitioner informed the bank about the said order as well as the Magistrate while the hearing of the application under Section 14 of the SARFAESI Act was going on, the same could not have any impact on the proceeding under Section 14 of the SARFAESI Act. The Magistrate functions under Section 14 of the SARFAESI Act in an administrative capacity and does not have the power to make any adjudication.

16. Thus, there is no question of violation of judicial propriety in the present case at all.

17. In any event, the order of *status quo* cannot bind the bank or the tribunal.
18. As such, the *Vidur Impex* principle is also not applicable to the present case.
19. In fact, the filing of the present application by the petitioner is *mala fide* inasmuch as the petitioner seeks to protract the proceeding further. Having himself approached before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, the petitioner ought not to have invoked the writ jurisdiction of this Court for the self-same relief.
20. If the petitioner is aggrieved by his utensils and/or other articles lying within the property, the remedy lies under the SARFAESI Act itself in the proceeding pending before the tribunal.
21. Thus, WPA No. 3412 of 2024 is dismissed with liberty to the petitioner, however, to proceed with his challenge before the Tribunal in the pending proceeding of the petitioner under Section 17 of the SARFAESI Act.
22. For the deliberate attempt of the petitioner to protract the litigation and abuse of process of court, but keeping in view his financial stringency, the petitioner shall pay a token cost of Rs.100/- to the respondent-bank within a fortnight from date.
23. There will be no order as to costs.

24. 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.)