

05.03.2024
Sl. No.16(DL)
srm

C.O. No. 510 of 2024

Anoop Saxena & Anr.

Versus

Indiabulls Housing Finance Ltd. & Anr.

Mr. Dhiman Ray,
Mr. Dip Chanda

...for the Petitioners.

1. The revisional application arises out of an order dated August 18, 2023 passed in IA No.1026 of 2023 by the learned Debts Recovery Tribunal-I, Kolkata. IA No.1026 of 2023 was filed in connection with SA No.177 of 2022.
2. The petitioners prayed for stay of the order of the District Magistrate, Howrah. The District Magistrate allowed possession of the secured asset on the application filed by the finance company/secured creditor.
3. The petitioners submit 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 District Magistrate was not apprised of the fact that the petitioners had filed a representation before the finance company pursuant to the receipt of notice under Section 13(2) of the SARFAESI Act and the finance company had replied to such notice beyond the period of 15 days. All steps taken under the said Act by the finance company were erroneous and were not taken into consideration by the District Magistrate while passing the order of possession.

(b) The finance company had suppressed the fact that the property was encumbered and the nine points to be satisfied before the District Magistrate by an affidavit, were absent.

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 of Section 14 of the SARFAESI Act which had to be filed before the District Magistrate in the form of an affidavit had been satisfied and 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 actions of the bank and belated reply to the representation of the petitioner were not to be looked into by the District Magistrate. The interpretation of the law was not within the domain of the District Magistrate. There was no substantive illegality in the order passed by the District Magistrate, Howrah. The prayer for stay was refused.
6. In my opinion, the order impugned is an appealable order and the petitioners are 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-I, Kolkata may not be satisfactory, but such order should be assailed in the appeal which is an alternative statutory remedy. As 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,

especially when the same is either without jurisdiction or has been passed for extraneous consideration by 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.
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.)