

13.03.2024
sayandeep
Sl. No. ADSL 01
Ct. No. 04

MAT 459 of 2024
With
IA No: CAN 1 of 2024

Sk. Asfaruddin
Vs.
The State of West Bengal & ors.

Mr. Nilanjan Bhattacharjee
Mr. Ajit Kr. Mishra
Mr. Suprovat Banerjee
Mr. K. Maskara
..... for the appellant

Ms. Munmun Ganguly
Ms. Ashmita Chakraborty
..... for the State

Mr. Shiv Mangal singh
Mr. Piyus Chowdhury
..... for the Bank

This intra court appeal is at the instance of the writ petitioner and is directed against an order dated February 29, 2024 passed by learned Single Judge in WPA No. 5982 of 2024.

By the order impugned the writ petition stood dismissed.

The heirs of the borrower filed writ petition praying for issuance of a writ of mandamus commanding the respondents to set aside and quash all proceedings in connection with the auction sale and for an order restraining the respondent Bank from taking

physical possession of the assets of the legal heirs of Sk. Abu Hossain since deceased who was the borrower.

Mr. Bhattacharjee, learned advocate appearing for the appellant submits that the auction sale was conducted against a dead person and, therefore, the same is a nullity in the eye of law. He further submits that in a writ petition being WPA 784 of 2024, it was the specific contention of the Bank that the Bank is not in possession of the property which was the subject matter of the auction sale. He submits that the petitioners are in possession of the property in question and an order restraining the Bank from taking physical possession of the property in question is to be passed by this Court as the application under Section 17 of the SARFAESI Act, 2002 is still pending.

It appears from the record that the borrower suffered a proceeding under Section 13(4) of the SARFAESI Act, 2002 (for short 2002 Act) and the possession of the property was taken by the Bank on November 01, 2018. The appellant filed an application under Section 17 of the SARFAESI Act, 2002 and prayed for an order of injunction and such prayer was refused by the learned Tribunal on February 26, 2024. The learned Single Judge noted that a direction was passed to hand over possession of the property to the auction purchaser through police help.

The submission of the learned advocate for the Bank as recorded in the order dated 06.07.2021 in WPA

784 of 2020 filed at the instance of the auction purchaser that the Bank is not in a position to put the petitioner in that writ petition in possession as the borrowers illegally and forcefully dispossessed the Bank cannot come to the aid of the appellant.

The learned Single Judge noted the submission of the writ petitioner that some third party outsiders had taken possession of the property by dispossessing the Bank. Taking note of such submission, the learned Single Judge was right in observing that in the event it was the outsiders who had effected such dispossession, the writ petitioner/appellant herein does not have any *locus standi* to challenge the dispossession directed by the writ Court. The learned Single Judge after considering the materials available in the records observed that the Bank had taken possession on November 01, 2018 by following due process of law. The learned Single Judge assigned cogent reasons for dismissal of the writ petition.

We do not find any reason to interfere with such order passed by the learned Single Judge.

For the reasons as aforesaid, the appeal and application stand dismissed. However, there shall be no order as to costs.

It is, however, made clear that the challenge as to the auction sale which has been raised by the appellant herein in the application under Section 17 of the SARFAESI Act shall be considered by the Tribunal in

accordance with law without being influenced by the
aforesaid observations.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)