D/L.38.
March 28, 2024.
MNS.

WPA No. 7639 of 2024

Kashi Chandra Shaw
Vs.
UCO Bank and another

Mr. Rahul Karmakar,
Mr. Jibantaraj Dan Roy

… for the petitioner.

Mr. Samriddha Sen,
Mr. Sourjya Roy

…for the UCO Bank.

1. Affidavit-of-service filed in Court today be kept on record.
2. The gamut of the present dispute is limited.
3. The petitioner acted as a guarantor in respect of a loan taken by his son.
4. The account number which finds place in the sanction letter of the loan belongs to the son of the petitioner, who was the borrower. However, on the pretext of taking measures under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for alleged default of repayment of the loan by the son, the petitioner's pension account has been debited, almost to the full, by the respondent-bank.

5. Learned counsel for the petitioner argues that applying the principle of Section 60(1)(g) of the Code of Civil Procedure, 1908, read in conjunction with Section 31 of the SARFAESI Act, 2002, the pension of a person cannot be the subject matter of attachment/deduction.
6. In support of his contention, learned counsel for the petitioner cites a judgement of a learned Single Judge of the Madras High Court reported at *2015 SCC OnLine Mad 13309 (A. Muthuiruvakkal Vs. The State Bank of India and others)*, which supports the proposition of the petitioner.
7. Learned counsel for the respondent-bank contends that due to availability of equally efficacious alternative remedy in the form of a challenge under Section 17 of the SARFAESI Act itself, since the action taken by the bank is a measure under Section 13 of the SARFAESI Act, this Court ought to hold its hands in interfering under Article 226 of the Constitution of India.
8. Learned counsel for the bank contends that in a plethora of judgments, the Supreme Court has highlighted such self-imposed restraint to be exercised by courts. It is contended that under normal circumstances, unless the alternative remedy provided under a specific

Statute, which is virtually a code by itself, is exhausted, the writ court does not interfere.

9. Learned counsel for the bank also seeks to argue that the impugned action of deduction of the amounts-in-question do not tantamount to attachment as contemplated in Section 60 of the Code of Civil Procedure read with Section 31 of the SARFAESI Act.

10. In any event, it is contended that the provisions of Section 60 of the Code of Civil Procedure are not applicable to measures taken under the SARFAESI Act, which forms a code in itself.

11. A perusal of the statement of account of the petitioner with regard to Account No. 02700100011682, from which the impugned deduction has been made, shows that the same is different from the account number of the borrower as given in the sanction letter dated February 26, 2018, annexed at page 15 of the writ petition.

12. The series of amounts deposited in the said pension account goes on to show that virtually all of those pertain to payments of pension made by the ex-employer of the petitioner. As such, there cannot be any manner of doubt that the account-in-question, from which the

deductions were made, is exclusively the pension account of the petitioner.

13. The petitioner is justified in arguing that Section 31(g) of the SARFAESI Act clearly provides that any property not liable to attachment falls outside the purview of the SARFAESI Act.

14. Hence, the argument of availability of alternative remedy is defeated, as the action taken by the bank cannot count as one under Section 13 of the SARFAESI Act at all. The bank relies on Section 13(11) which provides that without prejudice to the rights conferred on the secured creditor under or by the said Section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in Clauses (a) to (d) of sub-section (4) in relation to the secured assets.

15. There is no manner of doubt insofar as the guarantor's liabilities being extensive with the borrower is concerned.

16. However, the issue at hand is whether in view of the specific provision in Section 31 (g), a pension account can at all come within the purview of the SARFAESI Act itself; consequentially, the deduction from the

pension account of the petitioner/guarantor can be labelled as a measure taken under Section 13 of the SARFAESI Act.

17. The definitive answer, in view of the provisions of the Statute as discussed above, has to be a resounding “No”.

18. Since the principle of Section 60 of the Code of Civil Procedure has been incorporated in and kept outside the SARFAESI Act by virtue of Section 31(g) of the latter statute, the defence of the bank that the provisions of Section 60 of the Code of Civil Procedure is not applicable, cannot also be tenable in the eye of law.

19. Thus, the impugned action of the respondent-bank in deducting virtually the entire amount lying in the pension account of the petitioner is palpably without jurisdiction, being *de hors* the law and beyond the provisions of the SARFAESI Act itself, thereby making such action amenable to the writ jurisdiction of this Court.

20. As such, there is no scope of sustaining the said action of the bank.

21. Accordingly, WPA No. 7639 of 2024 is allowed on contest, thereby directing the respondent-UCO Bank to reverse the deduction made by the Bank on March 2,

2024 to the tune of Rs.34,938/- from the pension account of the petitioner, bearing Account No. 02700100011682 lying with the UCO Bank, by refunding the said sum to the said account within a week from date.

22. The respondent-bank is further restrained by an order of injunction from deducting any amount from the said pension account of the petitioner in terms of the perceived rights of the respondent-bank with regard to the non-payment of the loan taken by the son of the petitioner.

23. However, it is made clear that nothing in this order shall preclude or prevent the respondent-bank from taking any other due measure as sanctioned by law to recover the debts left by the petitioner's son/borrower and to take other steps than the impugned action herein even against the petitioner/guarantor, if otherwise sanctioned by law.

24. There will be no order as to costs.

25. 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.)