01.08.2024
Court No.09
Item no.06
CP

WPA No. 10980 of 2024

Rabindranath Sarkar
Vs.
The State of West Bengal & ors.

Mr. Sarjit Sinha Roy
Mr. Tapan Roy
....for the petitioner.

Mr. Narayan Ch. Bhattacharya
Mr. Md. Ziaur Rahaman

....for the State.

Mr. P. K. Mukherjee
Mr. Subir Sena

.....for the bank.

The petitioner is aggrieved by the actions taken by the bank under the SARFAESI proceeding. The petitioner alleges that the bank had conducted itself in an arbitrary and irregular manner, i.e., first by taking possession of the property, secondly by not returning the valuables of the petitioner and thirdly, by taking over the possession from the petitioner who was neither the borrower nor the guarantor. As per the agreement for sale, the petitioner was the purchaser of the property. The petitioner prayed that a mandamus may be issued upon the bank to return the property to the petitioner.

The learned advocate for the bank submits that the petitioner was asked to take back his articles, but he failed to do so. It is next contended that the secured asset was taken possession of on the basis of an order passed under Section 14 of the SARFAESI Act. The said order was challenged before the High Court in an earlier round of litigation. The writ petition was dismissed granting liberty to the petitioner to raise his grievance before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The petitioner availed of such remedy and the Debts Recovery Tribunal rejected the interim application.

It is next submitted that the writ petition is not maintainable as the petitioner has a remedy by way of a statutory appeal before the Debts Recovery Appellate Tribunal.

Having heard the rival contentions, this court finds that the factum of being ousted from the premises on the basis of the order of the Magistrate under Section 14 of the SARFAESI Act was the subject matter of challenge in WPA No. 3412 of 2024. The petitioner contended that an order of status quo passed by the civil court should have been taken into consideration by the learned Magistrate, before orders under the SARFAESI Act were passed. A Coordinate Bench was of the view that Section 17 of the Act barred the jurisdiction of a civil suit to entertain disputes relating to SARFAESI proceedings.

The order of status quo would not bind the bank. However, the petitioner was allowed to approach the appropriate forum with his grievance. His Lordship was further of the view that the order of status quo was binding on the petitioner and his vendor. The suit was for declaration and permanent injunction, which did not in any way affect the right of the bank to proceed under the SARFAESI Act. Even if the matter was informed to the Magistrate, the Magistrate was not required to take cognizance of such order. His Lordship held that there was no violation of judicial propriety. His Lordship also found that the filing of the writ petition was a mala fide attempt on the part of the petitioner to protract the matter. The writ petition was accordingly dismissed, with liberty to the petitioner to raise his grievance before the available forum.

Accordingly, the petitioner approached the Debts Recovery Tribunal by filing several applications. One such application was I.A. No.1078 of 2024. The same was dismissed. The petitioner had prayed for stay of notice dated February 1, 2023, issued by the bank under Section 13(4) of the SARFAESI Act. The prayer was not entertained by the tribunal on the ground that neither the pendency of the civil suit in respect of the property in question nor the agreement entered into between the petitioner and the vendor/borrower, were sufficient to injunct the bank from taking possession of the secured asset. It was found that the handwritten agreement on a Rs.10/- non-judicial stamp paper, without any details of the property in respect of which such agreement had been entered into, was not acceptable as a deed of sale. Thus, the application filed by the petitioner was dismissed. The authority found that the bank had not acted fraudulently and the bank was proceeding against the defaulting borrower, in accordance with law.

It was also found that the CERSAI report was registered by the bank on March 8, 2018, whereas, the alleged agreement was executed on March 31, 2018 after CERSAI registration. Thus, the Debts Recovery Tribunal rightly rejected the application.

In the first round of litigation before this court, the prayer of the petitioner for restoration of possession and for setting aside the order of the learned Magistrate under Section 14 and the action of the bank under Section 13 (4) of the SARFAESI Act, were not entertained. In fact, there is a finding of mala fide intention on the part of the petitioner. There is a specific recording that the result of the suit was not binding upon the bank.

It also appears to this court that an agreement was allegedly entered into between the petitioner and the borrower which was printed on a non-judicial stamp paper of Rs.10/-. Under the law, this cannot be accepted as a deed of sale as the instrument was required to be registered. In any event, all these issues are pending before the learned tribunal and the tribunal may proceed in accordance with law.

Although there are no details of what articles of the petitioner was lying in the premises, the petitioner is at liberty to approach the bank for return of the articles, the inventory of which has been prepared. The details of such articles are not available before this court. It is expected that the bank has kept the articles in an appropriate storage facility.

If the petitioner applies before the bank within 10th August, 2024, for return of the articles which have been inventorized by the bank in the presence of the Magistrate's representative, the same shall be returned to the petitioner upon formal compliances.

Once the petitioner approaches the bank with the application, a notice shall also to be sent to the borrower as it is not possible for the bank to ascertain who is the actual owner of the alleged articles.

The issues which have been decided, cannot be reagitated. Moreover, the petitioner has a remedy before the DRAT against the order of the DRT. The writ petition has been filed in ignorance of the statutory provisions. The same cannot be entertained.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

All parties are to act on the basis of server copy of this order.

(Shampa Sarkar, J.)