D/L.47.
May 3, 2024.
MNS.

WPA No. 11723 of 2024

Mr. Vijay Modi and another
Vs.
The Union of India and others

Mr. Amit Singh,
Mr. Rahul Soni

… for the petitioners.

Mr. Debasish Chaudhuri,
Mr. Prolay Bhattacharjee

…for the Union of India.

Mr. Pankaj Kumar Mukherjee

…for the Union Bank of India.

1. Affidavit-of-service filed in Court today be kept on record.
2. The writ petitioners submit that the writ petitioners purchased a property from the respondent-Bank in an auction purchase held on October 30, 2023. The Bank duly issued sale certificate and also gave possession to the petitioners. However, at that juncture, the bank extracted a declaration from the petitioners whereby the petitioners undertook that they would safe-keep the movables as per inventory enclosed under "superdari" and would hand over those movables to the bank

or to some other person upon the instructions of the bank only.

3. It is submitted that till then the bank has not removed the articles, thereby saddling the petitioners with the unnecessary burden of looking after those movable properties. The writ petitioners seek a direction on the Bank to remove such articles from the subject property.

4. Learned counsel appearing for the Bank hands over certain documents, including an application filed in connection with SA 266 of 2023, which is, according to the Bank, an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act) filed by an alleged tenant in respect of the self-same property.

5. Learned counsel for the Bank submits that although there is no restraint order impeding the bank from removing such articles, for the sake of fairness and in order to avoid unnecessary allegations on the part of the applicant in SA 266 of 2023, the Bank has made a formal application before the Tribunal, inter alia, seeking to remove the said movable properties and to sell the same and adjust the

said amount in the loan accounts of the borrower.

6. It is submitted that the said application has not yet been disposed of by the Tribunal.
7. Learned counsel for the Bank also submits that the Bank apprehends criminal action at the behest of the applicant in the said SA 266 of 2023, since already complaints have been lodged against the officials of the Bank by the said applicant.
8. Upon a perusal of the materials on record, it transpires that admittedly a sale certificate was issued in favour of the petitioners, thereby finalizing the sale of the secured asset/subject property in favour of the petitioners, and that the possession of the property has also been handed over to the petitioners.
9. Hence, it is now the responsibility of the Bank to relieve the writ petitioners from the continuing liability of movable properties, which are still lying in the subject property.
10. Even if an application under Section 17 of the 2002 Act has been preferred by a third party, in the absence of any restraint order from any competent forum, nothing prevents the Bank from removing such movable assets.

11. Accordingly, WPA No. 11723 of 2024 is disposed of by directing the respondent no. 6 to remove the movable properties as mentioned in the Bank’s declaration annexed at page 45 of the writ petition from the subject property at the earliest, preferably within six weeks from date.
12. It is made clear that such movable assets, after being taken over by the Bank, shall be subject to the orders, if any, passed by the Tribunal in connection with SA 266 of 2023.
13. The petitioners, it is made clear, shall be at liberty to approach the competent civil court for any claim that the petitioners may have against the Bank on account of having retained and looked after the movable properties for so long.
14. The Bank will be at liberty to seek appropriate police help from the local police station in the event any obstruction is faced by the Bank employees/agents at the time of removing such movable assets from the subject property. If so approached, the concerned police authorities shall provide adequate police assistance at the cost of the respondent-Bank for such purpose.
15. There will be no order as to costs.

16. 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.)