

AD-34&35  
Ct No.09  
21.05.2024  
TN

WPA No. 13071 of 2024

Sri Rudra Bhattacharya and another  
Vs.  
The Authorised Officer, Bank of India and others

With

WPA No. 12003 of 2024

Sri Rudra Bhattacharya and another  
Vs.  
The Authorised Officer, Bank of India and others

Mr. Rudra Bhattacharya

.... petitioner in person

Mr. R.C. Prusti,  
Mr. Sanjib Das,  
Ms. Smriti Das

.... for the respondent-Bank

**In Re: WPA No. 12003 of 2024**

1. The petitioner, appearing in person with the leave of court, submits that the tribunal by the impugned order has turned down the petitioner's application under Section 340 of the Code of Criminal Procedure (CrPC) in a cryptic manner without adverting to the allegations made in the said application.
2. The petitioner seeks to take the court painstakingly through the different paragraphs of the application made before the tribunal and submits that the tribunal ought to have adverted to the relevant materials as well as the allegations made in his application.

3. Learned counsel for the Bank submits that the remedy of the petitioner lay in an appeal before the appropriate appellate authority and not in the writ court. Secondly, learned counsel for the Bank hands over a copy of an order dated July 15, 2021 passed in CO No. 592 of 2021 between the present petitioner and another and the authorised officer of the respondent-bank where it was held *inter alia* that due process of law was followed at every stage by the respondents therein to obtain a valid order of recovery and an order of possession under Section 14 of the SARFAESI Act, 2002 from the concerned Magistrate. It is thus submitted that the issue has already been decided finally and ought not to be re-opened.
4. As regards the objection as to maintainability of the writ petition, since the petitioner alleges that the impugned order is vitiated by non-consideration of the allegations made by the petitioner and utter lack of reasons, the principles of natural justice are hit, since reasons are the soul of a judgment and it is the pre-requisite of any court/tribunal to support its orders by adequate reasons which is found lacking in the present case. I find that the tribunal did not advert to any of the allegations made in the petitioner's application under Section 340 of the CrPC nor did it look into the pleadings and materials in respect of which the alleged offences have been committed but merely quoted the relevant sections from the CrPC.

5. Insofar as the order passed in CO No. 592 of 2021 is concerned, the same has no bearing whatsoever in the present context, as the court vindicated the bank's stand in the said case that the SARFAESI action was taken legitimately in due process of law. The said observation *per se* does not tantamount to a conclusion that there was no fraud or forgery committed in the proceedings pending before the tribunal and, as such, the argument of the bank that the issue has been conclusively decided is not tenable.
6. In view of the above observations, it would only be appropriate if the matter is remanded to the tribunal for a detailed consideration and for passing a reasoned order on the application under Section 340 CrPC made by the petitioner. Since the writ court is not a fact-finding forum, this court does not have any intention to usurp the jurisdiction of the tribunal itself, where the forgery/fraud was allegedly committed, in deciding the application under Section 340 CrPC.
7. Accordingly, WPA No. 12003 of 2024 is allowed, thereby setting aside the impugned order of the tribunal dated February 01, 2023 to the extent that the same rejected the petitioner's application under Section 340 CrPC, remanding the matter to the Presiding Officer of the tribunal with a direction to re-adjudicate the petitioner's application under Section 340 CrPC on its own merits by advertng to all the allegations made in the said application upon a scrutiny of the concerned

pleadings/documents in respect of which the alleged forgery/fraud was committed.

8. The said exercise shall be concluded as expeditiously as possible in accordance with law without being prejudiced by the observations made by the Presiding Officer in the order impugned herein, by giving adequate opportunity of hearing to the petitioner as well as the bank, preferably within eight weeks from this date.
9. There will be no order as to costs.
10. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**In Re: WPA No. 13071 of 2024**

11. The petitioner, appearing in person with the leave of court, submits that despite the tribunal having directed return of movable properties of the petitioner as per inventory list, such movables have not yet been returned to the petitioner.
12. Learned counsel for the Bank refutes the contentions of the petitioner.
13. Be that as it may, since the order was passed in favour of the petitioner, I do not find any occasion for the petitioner to challenge the same.
14. However, if the petitioner is aggrieved with non-implementation of the said order, the petitioner is always at liberty to approach the Presiding Officer of

the concerned tribunal for implementation of its order directing return of the movable properties to the petitioner.

15. Accordingly, WPA No. 13071 of 2024 is disposed of without interfering with the impugned order whereby the movables were directed to return to the petitioner, granting liberty to the petitioner to seek implementation of the tribunal's order before the tribunal itself.
16. It is made clear that in the event it is found that the said order cannot be implemented for some reason or the other, the petitioner will be at liberty to apply to the tribunal for being adequately compensated in the event it is found that the bank was negligent for not returning the movables to the petitioner in time in terms of the said order.
17. If such an application is made, the tribunal shall decide the same in accordance with law upon giving opportunity of hearing both to the petitioner and the bank.
18. There will be no order as to costs.
19. 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.)

