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16.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 13222 of 2024

PNB Housing Finance Limited & Anr.
Vs.
State of West Bengal & Ors.

Mr. Pratip Mukherjee,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh,
Ms. Indrani Majumdar
...for the petitioners

Ms. Jayeeta Sinha,
Mr. Ranjit Rajak
...for the State

Mr. Arindam Banerjee
...for the respondent no. 6

Mr. Meghnath Dutta,
Mr. Lalratan Mondal
...for the respondent no. 8

1. Affidavit of service filed today be kept on record.
2. Learned counsel for the petitioners contends that the petitioners took measures under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Pursuant thereto, an application under Section 14 of the 2002 Act was filed, which culminated in an order being passed and possession being handed over to the petitioners.

3. Subsequently, however, the private respondent no. 8 took forcible possession, resulting in the petitioners applying further before the District Magistrate for consequential orders to implement its earlier order. Police complaint was also lodged.

4. Learned counsel for the State hands over a set of instructions indicating that on the complaint of the petitioners, an enquiry has already been held and steps are being taken by the police in pursuance of the said complaint.

5. Learned counsel for the Borrower submits that at present a challenge under Section 17 of the 2002 Act against the order passed by the District Magistrate is pending. Since the next date of the same is fixed on May 30, 2024, this Court ought not to pass any order immediately directing the possession to be further handed over to the Bank. That apart, the jurisdiction of the Magistrate in passing a further order under Section 14 of the 2002 Act is also called in question.

6. Learned counsel for the respondent no. 8, the alleged tenant who is in possession, submits that as opposed to the Division Bench judgment of the Bombay High Court cited by the petitioners, the said respondent has been in possession of the property all along. Moreover, since the petitioners have already taken out a further application for

implementation of the order of the Magistrate, unless such order is passed, this Court, sitting in writ jurisdiction, ought not to prematurely decide the issue involved therein.

7. In the Division Bench judgment cited by the petitioners, which is an unreported judgment in Writ Petition No. 10069 of 2022 (*The Nashik Merchant Co-operative Bank vs. The District Collector, Jalna & Ors.*), the Bombay High Court, while considering a similar situation, took into consideration the previous judgments of the same Court. The Division Bench clearly found that such action of a third party, taking forcible possession of the secured asset even after possession was handed over to the Bank/financial institution, amounted to assault on law and statute.

8. It was also observed that the Bank had deployed security guards, despite which possession was taken. There was no bar, it was held, for a second application to be filed under Section 14 of the 2002 Act itself.

9. That apart, the Division Bench of the Bombay High Court took into consideration the fact that the intruders had taken into their own hands the law and, as such, there was no prohibition in appropriate orders being passed for expulsion of the said people.

10. Upon a careful consideration of the judgment of the Bombay High Court, I respectfully agree with the proposition laid down therein.

11. Section 14(2) of the 2002 Act sufficiently affords scope for a wide interpretation in favour of the ratio laid down in the Bombay High Court judgment. The said sub-section provides that for the purpose of securing compliance with the provisions of sub-section(1) of Section 14, the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

12. In the present case, although possession had initially been handed over to the Bank, which is borne out by the possession notice and the materials annexed to the writ petition, subsequently, the respondent no. 8. intruded into the property, which is evident from the face of the records. In fact, a police complaint was lodged, which has already set into motion by the police who have held an enquiry and are taking due steps in the matter.

13. Thus, there cannot be any manner of doubt that, contrary to the submission of the respondent no. 8, even after the possession was physically handed over to the Bank, the respondent no. 8

barged into the property unlawfully, in the teeth of the order passed by the District Magistrate.

14. On a conjoint reading of Section 14(2) of the 2002 Act and the ratio laid down in the Bombay High Court judgment cited by the petitioners, there cannot be any manner of doubt that there is no restriction in the statute for the District Magistrate to implement its orders in all possible methods sanctioned by law.

15. As opposed to respondent no. 8, the petitioners have not taken law into their own hands but have taken resort to police help and, as such, the petitioners cannot be faulted for taking any action in contravention of law or constitutional provisions.

16. In such view of the matter, there cannot be any reason for this Court to stay its hands and keep its eyes shut in the teeth of palpable illegality on the part of the respondent no. 8.

17. As regards the pendency of a challenge under Section 17 of the 2002 Act, it is an admitted position that the same was filed in the year 2022, bearing SA 139 of 2022. Since the borrower did not care to obtain an interim order of stay till date, no further lenience ought to be shown in favour of the borrower or the respondent no. 8 just because the matter is next fixed on May 30, 2024. Having failed to obtain any order so long for two years, nothing

turns on the pendency of the application under Section 17 of the 2002 Act.

18. In view of the above observations, W.P.A. No. 13222 of 2024 is allowed on contest, thereby directing the respondent no. 2, that is, the District Magistrate, Alipore, South 24-Parganas, to immediately pass appropriate orders and take steps to ensure that the possession is immediately handed over again in favour of the petitioners.

19. It is expected that such possession shall be handed over to the petitioners as expeditiously as possible, positively within three weeks from the date of communication of this order to the respondent no. 2.

20. Instructions filed by learned counsel for the State be kept on record.

21. All parties shall act on the server copy of this order without insisting upon prior production of a certified copy thereof for the purpose of compliance.

22. There will be no order as to costs.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)