D/L.15.
May 22, 2024.
MNS.

WPA No. 13907 of 2024

Shamik Mukherjee and others
Vs.
State of West Bengal and others

Mr. Arup Krishna Das,
Mr. Rafikul Islam Sardar,
Mr. Sanjoy Ghosh

… for the petitioners.

Sk. Md. Galib,
Mr. Abu Siddiqui Mallik

…for the State.

Mr. Dipankar Das

…for the respondent nos. 4 and 5.

1. Affidavit-of-service filed in Court today be kept on record.
2. The writ petition has been preferred against an order passed by a District Magistrate purportedly under Section 14 of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act), whereby possession has been directed to be given to the Authorised Officer of the bank.
3. Learned counsel for the petitioners submits that a settlement was arrived at between the petitioners and the bank as long back as in the year 2020.

4. Learned counsel places reliance on the order dated January 7, 2020 passed in SA No. 165 of 2015 by the Debts Recovery Tribunal-I, Kolkata annexed at page 60 of the writ petition in support of such contention, where it was recorded that the said SA was dismissed as it had become infructuous in view of the fact that the matter had been settled between the parties.
5. It is contended that despite such settlement, the impugned order has been passed apparently for recovery of possession in terms of the self-same loan, which was already settled, palpably *de hors* the law and all principles of natural justice.
6. Learned counsel for the bank argues that the order dated January 7, 2020 was recorded behind the back of the bank and the bank had no knowledge whatsoever of the said order. It is submitted that the said order annexed at page 60 of the writ petition does not exist.
7. It is contended that accordingly the bank proceeded with an application under Section 14 of the 2002 Act, being unaware of the existence of any such purported order, and the impugned order was passed on such application.

8. Learned counsel for the bank submits that immediately upon learning about the said order, the bank has filed an application for recall of the said order pointing out that the said order was never passed in reality.
9. Upon query of court, a copy of the application filed for recall/modification of the said order is handed over in court today.
10. Learned counsel for the bank submits that the purported order, the existence of which is denied by the bank, dated January 7, 2020 has been annexed thereto and in the immediately succeeding page, the actual order which was passed is also annexed. The bank denies the order dated January 7, 2020 having been passed at all.
11. However, this court is utterly surprised by the highhanded action of the bank. As of today, there exists a certified copy of an order dated January 7, 2020 passed in SA 165 of 2015, which has been annexed to the writ petition as well as to the recall application of the bank before the Tribunal, which in no uncertain terms records that none appears for the applicants/ present writ petitioners, but the bank was represented through counsel, who submitted that the matter was settled and

prayed for dismissal of the SA as no further cause of action exists in the SA.

12. In view of such submission of the bank, the said order was passed recording that in view of the submission made by the respondent-bank that the matter is settled between the parties and there is no dues against the applicant, the Tribunal was of the view that there was no cause of action further existing in the SA and accordingly SA 165 of 2015 was dismissed as infructuous.

13. Even if the bank is of the perception that such order has not passed, till the same is recalled upon the application of the bank to that effect being allowed, the order remains on the records and is as valid as can be.

14. During pendency of the application of the bank for recall of the said order, the bank cannot arbitrarily presume that such application would be allowed and the said order would be recalled / modified. Mere filing of a recall / modification application, on whatever ground, does not automatically efface the order of which recall has been sought.

15. Hence, the impugned order passed by the District Magistrate, Howrah, under Section 14 of the 2002 Act was obtained by the bank by

gross suppression of material facts, which cannot be said to be less than practising fraud upon the District Magistrate, Howrah.

16. Not a single line of the existence of the order dated January 7, 2020 has been mentioned in the said order by the bank, although at the behest of the bank itself an application is pending for recall / modification of the said order.

17. It is unthinkable that a bank discharging public functions resorts to such fraudulent practice and obtains an order of possession by total suppression that an order of settlement exists on record and the bank has merely applied for recall / modification of the same which is still pending.

18. Strongly deprecating such high-handed action of the respondent-bank, WPA No. 13907 of 2024 is allowed on contest, thereby setting aside the impugned order passed by the District Magistrate, Howrah, dated May 11, 2023 under Section 14 of the 2002 Act.

19. Since the very application under Section 14 of the 2002 Act is based on falsehood, the said application stands hereby dismissed.

20. It is, however, made clear that nothing in this order shall prevent the respondent-bank from taking out a fresh proceeding under Section

14 of the 2002 Act or otherwise, in the event the bank succeeds in its application for recall / modification and the order dated January 7, 2020 passed by the Debts Recovery Tribunal-I, Kolkata, in SA No. 165 of 2015 is recalled and/or held to be null and void subsequently.

21. The copy of the application for recall / modification filed by the bank, which is handed over in court today, be kept on record.

22. There will be no order as to costs.

23. 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.)