

07.08.2024
Sl. No.237(ML)
srm

W.P.A. No. 16664 of 2024
Hamlyin Dealcomm Private Limited
Versus
The Union of India & Ors.

Mr. Partha Pratim Roy,
Mr. Anirban Das

...for the Petitioner.

Mr. Nimish Mishra,
Mr. Abir Mondal,
Mr. Aditya Mishra

...for the Respondent Nos.4 & 5.

Affidavit-of-service is taken on record.

The writ petition is maintainable before this Court at the instance of a company who alleges that its personal property has been attached by the secured creditor on the basis of an order passed by the District Magistrate under Section 14 of the SARFAESI Act. The petitioner is neither a borrower nor a guarantor as admitted by the secured creditor. The secured creditor has also written a letter to the petitioner and has informed the petitioner that further steps will be taken to demarcate the property. Thus, the secured creditor itself has disclosed its doubts with regard to the identity of the property. Had the secured creditor been confident that the property was

the secured asset, in that event the secured creditor would have outright rejected the claim of the petitioner.

Thus, the question of maintainability is answered in favour of the petitioner because the petitioner has challenged an overt act on the part of the secured creditor who has allegedly in the process of securing possession of an asset being LR Dag No.1149, has pasted the possession notice on the lands of the petitioner.

Under such circumstances, the decision in Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir reported in (2022) 5 SCC 345, is not applicable. Alternative remedy before the Debts Recovery Tribunal is not a bar. The allegation here is not the action by a secured creditor in initiating the SARFAESI proceeding, against a borrower's assets. The attempt of the secured creditor to attach the property belonging to the petitioner, which is not a secured asset, is the issue.

With regard to the dispute, it is necessary that a physical inspection and demarcation is made by the Amin in the office of the concerned Block Land and Land Reforms Officer. The District Magistrate, South 24-Parganas, will monitor the entire process of demarcation. Such demarcation shall be made by relaying the property with the mouza map as also the title deeds of the petitioner. The Amin shall prepare a report and furnish the same

to the District Magistrate within a week from the date of inspection/demarcation.

Needless to mention, the petitioner and the secured creditor will be present during the inspection. The petitioner shall be at liberty to respond to such report and the District Magistrate shall ensure that steps are taken by the secured creditor in accordance with law, on receipt of such report.

The entire action should be completed within a period of two months from date of communication of this order.

Till such demarcation, no further steps shall be taken in respect of the property on which the possession notice has been pasted.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)