

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 10.07.2024

DELIVERED ON: 10.07.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 1259 of 2024
With
I.A. No. CAN 1 of 2024**

**Moongipa Roadways & Ors.
Vs.
Kotak Mahindra Bank Limited & Ors.**

Appearance:-

**Mr. Suddhasatwa Banerjee
Mr. Sourajit Dasgupta
Mr. Vikas Baisya
Ms. Ranjana Seal**

.....for the appellants

**Ms. Soni Ojha
Ms. Sombrita B. Chatterjee**

.....for the respondent no. 1/writ petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. Heard the learned advocates for the parties.
2. There is delay of 28 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. I.A. No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

3. This intra-Court appeal by the respondent nos. 3 to 9 in the writ petition is directed against the order dated 1st May, 2024 in W.P.A. 11505 of 2024 filed by the Kotak Mahindra Bank Limited. The writ petitioner/bank was successful in the writ petition and the order passed by the District Magistrate was set aside and the District Magistrate was directed to dispose of the application under section 14 of the SARFAESI Act in accordance with law in the light of the observations of the Court in ***ITC Limited v. Blue Coast Hotels Ltd. & Ors.*** within a time frame.
4. The appellants appeared to have been not aggrieved by such direction but however, his grievance is with regard to certain observations made in paragraph 11. On going through paragraph 11 of the impugned order, we find there is no categorical finding with regard to the nature of the land in question. In any event, this is an issue, which needs to be adjudicated after considering the factual position, which, obviously, cannot be done in a writ petition.
5. In the event, the District Magistrate passes an order and that order is not in favour of the appellants herein, the appellants are entitled to question the order before the Debts Recovery Tribunal by filing an appeal under section 17 of the SARFAESI Act. In the event, the apprehension of the appellants is that the observations in paragraph 11 would come in their way, we feel that the appellants need not have any such apprehension. Such observations made in paragraph 11 cannot be construed to be a conclusive finding as regards the nature of the property.
6. It further appears from the observations made in paragraph 10 of the impugned order that the learned Single Bench specifically noted that the

District Magistrate, within the limited confines of section 14 of the 2002 Act cannot enter into the merits of the matter and/or as to whether the subject property can come within the purview of 2002 Act.

7. With the above clarifications, the appeal and the application (I.A. No. CAN 1 of 2024) stand disposed of.
8. No costs.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)