02.07.2024
Ct. No. 09
Item No.09
Cp

WPA No. 16967 of 2024

Usha Bagri
Vs.
PNB Housing Finance Limited & Ors.

Mr. Arindam Banerjee
Mrs. Arpita Saha
Ms. Anamika Bari
...... for the petitioner.

Mr. Pratip Mukherjee
Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh
Ms. Indrani Majumdar
.....for the respondent nos. 1 & 2.

1. The petitioner contends that she was a pre-mortgage tenant, in possession of the property in respect of which an application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') was allowed by the District Magistrate. The presence of the petitioner in respect of the premises was suppressed before the District Magistrate. This was in violation of the requirements of Section 14. Although the petitioner made a representation before the District Magistrate, no cognizance was taken. It is submitted that the police authorities and the bank, are trying to dispossess the petitioner.

2. Mr. Mukherjee, learned advocate appearing on behalf of the bank, submits that an order was passed in WPA No. 13222 of 2024 by which the District Magistrate, Alipore was directed to pass appropriate orders to ensure the possession of the bank in respect of the property.
3. The bank is unable to satisfy the court whether any order was passed pursuant to the direction of this court on May 16, 2024. It appears to this court that although the petitioner is apprehensive that a subsequent order of dispossession was passed by the District Magistrate, no such order is available. The bank has also not been able to produce any such order before this court. However, the bank authorities submit that they have knowledge of the fact that order of His Lordship dated May 16, 2024 has been complied with by the District Magistrate.
4. The issue before this court is whether an alleged pre-mortgage tenant was required to be heard by the District Magistrate or not. Reference to the sanction letter has been made wherein the bank, before sanctioning the loan, had specified that escrow of the rentals from M/s. Chaskaa Reloaded and Usha Bagri was to be done prior to release of top up funds. Similar condition was also included in the disbursement letter. The petitioner is Usha

Bagri. She is the wife of the guarantor, who is also a director of the company which took the loan.

5. It appears from the order of His Lordship dated May 16, 2024, that the bank had taken possession. Thereafter, somebody trespassed into the property and the bank approached the writ court. The writ court directed the District Magistrate to once again take appropriate steps by passing appropriate orders and to hand over possession to the bank. The petitioner does not figure in that proceeding. The question which is required to be answered, on appreciation of evidence, would be whether at any time during the entire transaction, the petitioner was noted to be in possession of the property as a pre-existing/pre-mortgage tenant and whether the petitioner's presence was available from the records and correspondence. This fact-finding exercise cannot be done by the writ court. Whether the petitioner's tenancy was not mentioned by the bank at all in the writ petition or why the order of this court does not record the existence of a pre-mortgage tenant, is a matter which has to be decided on evidence.

6. Under such circumstances, the remedy of the petitioner would be to approach the Debts Recovery Tribunal by filing an appropriate application challenging the orders passed under

Section 14 of the SARFAESI Act. Both parties will be entitled to place their individual cases. The contention of the bank that the petitioner has been set up by her husband, will be available before the Tribunal.

7. It is the contention of the petitioner that the orders have not been supplied to the petitioner as she was not a party in the proceeding before the District Magistrate.
8. The Debt Recovery Tribunal will accept the application with plain/photo-copies of the orders passed by the District Magistrate. If the copies are not available, the application will be accepted without the same and the bank will be required to produce the orders.
9. It is made clear that for 10 days, no coercive measures will be taken against the petitioner.

10. Accordingly, the writ petition is disposed of without any interference.

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

(Shampa Sarkar, J.)