

03.10.2024
Sl. No.5(DL)
srm

W.P.A. No. 17910 of 2024

With

CAN 1 of 2024

Sri Mukesh Kumar Singh

Versus

The District Magistrate, North 24-Parganas & Ors.

Mr. Debapriya Gupta,
Mr. Rudra Prasad Sinha,
Ms. Aparupa Bhattacharya

...for the Petitioner.

Ms. Aparajita Ghosh
Mr. Souvik Ghosh

...for the Respondent Nos.2 & 3.

Affidavits-of-service are taken on record.

The petitioner is the borrower. He has approached this Court challenging the steps taken by the bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act), alleging that the bank could not proceed against the security asset as it belonged to his late father. The heirs had a right to contest the proceedings.

Admittedly, the father was a guarantor and the property which the petitioner claims by way of inheritance was already mortgaged to enable the petitioner to take the loan from the bank. The petitioner prays that the proceedings be set aside on

the ground that a dead person's property could not be taken over by the bank, without proceeding against the legal heirs.

Section 17 of the SARFAESI Act allows every aggrieved person to approach the learned Tribunal against the SARFAESI proceedings initiated by the bank.

It appears that the petitioner has already approached before the learned Debts Recovery Tribunal-III, Kolkata by filing SA 489 of 2023. The other legal heirs are not before this Court. The question of violation of principles of natural justice of the petitioner does not arise at all. The petitioner has availed of his remedy before the learned Debts Recovery Tribunal. Sale notice was issued. It is a fact that the sale has failed. Thus, the petitioner can approach the learned Tribunal with all his available prayers. The law clearly bars the writ Court and Tribunals from directing the bank to settle the matter, and such prayer also cannot be allowed by this court. It is between the petitioner and the bank.

The petitioner may pray for expeditious disposal of the proceeding before the learned Debts Recovery Tribunal.

The writ petition is, thus, disposed of.

In view of disposal of the writ petition, the connected application has become infructuous and the same is disposed of accordingly.

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.)