February 26, 2024
Sl. No.6
Court No.19
s.biswas

CO 2578 of 2023

*Jayati Sardar*
*vs.*
*The Authorized Officer, India Bulls Housing Finance Limited and another*

Mr. Tanmoy Chattopadhyay
... for the petitioner
Mr. Avishek Guha
Ms. Sonal Agarwal
... for the opposite parties

1. The revisional application arises out of an order dated August 9, 2019 passed by the learned Debt Recovery Appellate Tribunal (DRAT) at Kolkata in Appeal No.152 of 2018, which arose out of SA NO.249 of 2017 in DRT-3, Kolkata.
2. By the order impugned, the learned appellate tribunal rejected the appeal on the ground that the delay caused by the petitioner in approaching the learned tribunal could not be condoned on a sympathetic ground or on an understanding that there could be some merit in the case. Unless there was sufficient explanation for the delay caused in filing the SARFAESI proceedings, the appeal could not be allowed.
3. The appellant before the learned tribunal who is the petitioner before this court, failed to explain the reasons for the inordinate delay of more than six years in approaching the learned tribunal by filing the SARFAESI application. The possession of the property had been handed over to the

auction purchaser and the sale deed had been executed. The sale had become absolute. With regard to movable items and household goods, the learned DRT had already directed that the goods should be handed over to the petitioner.

4. Mr. Chattopadhyay, learned advocate appearing for the petitioner, submits that the petitioner is a widow, who was not conversant with law. Her husband was the borrower, who expired. The loan agreement was entered into on April 25, 2006. Notice under Section 13(2) of the SARFAESI Act was issued on May 14, 2008. Notice under Section 13(4) of the SARFAESI Act was issued on August 12, 2009 and physical possession was taken on July 7, 2010. On September 6, 2010 the property was auctioned. In 2016, the petitioner filed WP 27703(W) of 2016 before this court. On the basis of the liberty granted by a learned Judge of this court on December 16, 2016, the petitioner had filed the SARFAESI proceedings.

5. The writ petition was filed on November 30, 2016, but possession was taken in 2010. Baruipur P.S. case No.1973 of 2016 under Section 379 of the IPC had been registered, on the basis of the complaint of the petitioner alleging removal of her personal belonging.

Taking into account these aspects, the writ court held that there was no scope to extend any relief to the petitioner, except directing that the investigation should be taken to its logical conclusion. It was observed that the petitioner would be at liberty to approach the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, in accordance with law. The parties were further allowed to approach the learned criminal court for compounding of the offence. SARFAESI proceedings were initiated before the learned Debt Recovery Tribunal-3 by the petitioner, upon disposal of the writ petition.

6. The petitioner did not file any application explaining the delay in approaching the learned tribunal. The learned tribunal was of the view that it was an admitted position and the applicant/petitioner also did not deny that possession of the secured asset was taken sometime in 2010. It was also admitted that the flat had been sold in the year 2010. The fact that the loan was taken by the petitioner's husband but was not repaid, was also not disputed.

7. Under the circumstances, the applicant ought to have approached the learned tribunal within the period of limitation, which she did not. For more than five years, she had been living in a separate

house with her children. The bank allegedly took action for sale of the household belongings and challenging such action, the petitioner filed a writ petition, alleging overt act on the part of the bank and inaction on the part of the police in not taking steps on the basis of the complaint filed with regard to action of the bank in removing her personal items from the secured asset. These are all findings of fact arrived at by both the fora which need not be re-appreciated by the court.

8. Under the above circumstances, the SARFAESI application disputing the sale which had taken place in 2010, was found to be barred by limitation and the SA 249 of 2017 was dismissed.

9. Aggrieved, the petitioner approached the DRAT. The DRAT was of the same view that when the physical possession was taken on July 7, 2010 and the property was sold on September 5, 2010, SA, which was filed on January 30, 2017, that is, after six years from the measures taken by the respondent bank was not maintainable. No application for the delay caused was filed before the DRT.

10. In the instant case, the demand notice was admittedly issued in the year 2008. Physical possession was taken in 2010. Property was sold in September 2010 and no action was taken by

the petitioner within the period prescribed by law. An FIR was lodged against the bank for removal of the personal items of the petitioner. The petitioner lodged a complaint, but the police authorities did not take any steps. Challenging such action of the bank in putting up the household items for sale, the writ petition was filed, along with the allegation of police inaction. The learned writ court directed the police to proceed in accordance with law and liberty was granted to the parties to compound the offence, also in accordance with law. The court was of the view that remedy of the petitioner was before the learned Debt Recovery Tribunal, in accordance with law. The law has been well-settled that Section 5 of the Limitation Act would not apply in case of any proceedings under Section 17 of the SARFAESI Act. Secondly, there was no application before the learned tribunal explaining why the SARFAESI proceedings were initiated after six years from the date of taking over possession by the bank. Third party rights were created in 2010/2011, but the petitioner kept quiet. The learned tribunal found that the petitioner was residing elsewhere with her children. She only approached the writ court challenging the act of the bank in putting up her household items for sale and alleging that the police authorities had not acted on the basis of the complaint. The action of the bank under the SARFAESI Act was not the subject matter of challenge in the writ petition. The writ petition was filed after six years from creation of third party rights.

11. Thus, the advantage of Section 14 of the Limitation Act would also not be available to the petitioner. Rather, the petitioner slept over her rights for a long time and was only aggrieved when the bank was allegedly putting up her household items for sale. This aspect of complaint of the petitioner had been addressed by the police authorities, who had registered an FIR and the learned tribunal had directed the bank to return the household items.

12. Under such circumstances, this court does not find that there is any material irregularity or error of jurisdiction in the order passed by the learned appellate tribunal.

13. As the auction notice was published in 2010 and the property was sold in 2011, the petitioner also would not have any right of redemption. No useful purpose will be served in showing any sympathy to the petitioner.

14. The revisional application is dismissed. The bank will act in accordance with law as directed by the learned tribunals.
15. All the parties are directed to act on the basis of the server copy of the order.
16. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities

**(Shampa Sarkar, J.)**