

26.09.2024
Sl. No.12(DL)
srm

W.P.A. No. 19704 of 2024

Md. Aftab Alam Ansari

Versus

The District Magistrate, Paschim Bardhaman & Ors.

Mr. Sounak Bhattacharya,
Mr. Sumitava Chakraborty,
Ms. Bratati Pramanick,
Mr. Sounak Mondal

...for the Petitioner.

Ms. Mousumi Banerjee

...for the State-respondents.

Mr. Om Narayan Rai,
Ms. Anindita Das

...for Union Bank of India.

The petitioner is aggrieved by the possession notice issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 by the authorised officer of the Union Bank of India.

According to the petitioner, the father was the owner of the property, which was mortgaged. The loan was taken by the petitioner's brother. After demise of the father, the petitioner claims interest in the property and submits that a partition suit is pending.

The bank is a secured creditor who has a claim over the property. After the loan account became an NPA, the bank

had the right under the law to take steps as per the SARFAESI Act. The bank has proceeded under Section 13(4) of the SARFAESI Act.

Section 37 of the SARFAESI Act makes the law in addition to and not subject to any other law. The right of the bank to proceed against the secured asset has been provided under the SARFAESI Act.

Under such circumstances, no order can be passed in the writ petition.

The other aspect is that the petitioner had an alternative remedy before the learned Debts Recovery Tribunal, if the petitioner was aggrieved by the notice. Any person aggrieved by any step under the SARFAESI proceeding, is entitled to approach the learned Debts Recovery Tribunal. The issue involved is not the right of the petitioner by way of inheritance. The issue is that the property in which the petitioner claims a share from his father by way of inheritance was already mortgaged during the lifetime of his father with the bank and the property was a secured asset over which the bank had a security interest.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)