

29.07.2024
Sl. No.11(DL)
srm

W.P.A. No. 20550 of 2022
With
CAN 3 of 2024
(Application not in File)
Smt. Ratna Saha & Anr.

Versus

The District Magistrate, Paschim Bardhaman & Ors.

Mr. Baidurya Ghosal,
Mr. Abhijit Sarkar,
Mr. Raja Biswas,
Mr. Saikat Mukherjee

...for the Petitioners.

Mr. Jayanta Samanta,
Mr. Tapas Ballav Mondal

...for the State-respondents.

Mr. Atarup Banerjee,
Mr. Rajdeep Pramanik

...for the Respondent No.7.

Mr. Shaswat Nayak,
Ms. A. Guha

...for the Indian Bank.

The petitioners claim to be auction purchasers of a mortgaged property. The petitioners submit that in a SARFAESI proceeding, the mortgaged property was auctioned and the petitioners purchased the same. The sale certificate was issued. The petitioners are aggrieved because vacant possession was not handed over. The petitioners pray that the District Magistrate should be directed to pass necessary orders under Section 14 of the SARFAESI Act.

The learned Advocate for the tenant submits that the writ petition was filed without impleading the tenant, although proceedings are pending in the civil court. Subsequently, on the application of the tenant, such addition was allowed. The tenant submits that vacant possession cannot be granted by the creditor until the suit is disposed of.

The learned Advocate for the bank submits that the secured asset was transferred to M/s. Alchemist Asset Reconstruction Company.

The property is in the possession of the tenant. A civil suit is pending. The tenant claims to be a pre-existing tenant i.e., prior to the mortgage. The suit is pending since 2015.

It appears that the petitioners had approached the civil court praying for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. The said application was allowed. The plaint was rejected. Aggrieved, the tenant preferred an appeal. The appeal was allowed and the following order was passed:-

“that the appeal be and the same is allowed on contest without any order as to costs. The decree under challenge, as was passed by Ld. Civil Judge (Jr. Divn.), 1st Court, Durgapur in Title Suit no.35/2015, is hereby set aside. Ld. Civil Judge (Jr. Divn.), 1st Court, Durgapur is requested to proceed with the suit as per law without being influenced by any observation made by this Court regarding respective position of the parties except those in regard to the order of rejection of plaint. The parties are directed to appear

before the Court of Ld. Civil Judge (Jr. Divn.), 1st Court, Durgapur for further proceeding of title suit no.35 of 2015 on 03.01.2019.

Let the record of the aforementioned suit be sent to the Court of Ld. Civil Judge (Jr. Divn.), 1st Court, Durgapur along with a copy of this judgement.”

It appears that the suit is now continuing before the learned Civil Judge (Junior Division), 1st Court, Durgapur. It also appears that two civil revisions, arising out of the said proceeding, at the instance of the petitioners are also pending before this Court.

Under such circumstances, this Court does not find any reason to pass any orders in this writ petition. The petitioners, as the auction purchasers, can avail of any other remedy as per law. The petitioners are already contesting the suit. The suit is at the stage of trial. This Court further opines that the right of the tenant to remain in the property and the consequent claim of the auction purchasers for handing over vacant possession of the property in question, would be dependent on the result of the suit.

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 accordingly disposed of.

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.)