

05.09.2024
Sl. No.19(DL)
srm

W.P.A. No. 21756 of 2024
Jarina Begam
Versus
The State of West Bengal & Ors.

Mr. Tarun Kanti Halder
...for the Petitioners.

Mr. Dipanjan Datta
...for the Bank of Baroda.

Affidavit-of-service is taken on record.

The petitioner is the wife of the guarantor Jaminur Rahaman. The borrower is Mr. Aminur Rahaman. The borrower failed to repay the money borrowed from the bank. The account was declared NPA. The guarantor was also made liable under the terms and conditions.

Under such circumstances, the bank had proceeded in accordance with the provisions of Section 14 of the SARFAESI Act. The Additional District Magistrate, Murshidabad passed an order allowing physical possession to be delivered to the bank, upon Aminur Rahaman and the guarantor Jaminur Rahaman taking back their materials, goods and assets. Neither of these persons are apparently aggrieved by the order of the Additional District Magistrate. Instead, the wife of

the guarantor has come before this Court claiming to be a co-sharer.

In any event, the order passed is amenable to an appeal under Section 17 of the SARFAESI Act. Any person aggrieved by any order under the said Act can approach the Debts Recovery Tribunal. The petitioner is also at liberty to approach the tribunal, in accordance with law. A partition suit is pending and the said proceeding is independent of the right of the bank to proceed against the secured asset.

The petitioner can claim any relief in the partition suit as per law, which will be decided by the civil court. This Court has not expressed any opinion in this regard.

The SARFAESI Act was promulgated by the legislature to facilitate recovery of dues in an efficient and efficacious manner, without court's intervention. The statute has stood the test of time. By challenging the vires of Sections 13(2) and 13(4) of the Act, an illusion of jurisdiction of the writ court cannot be created. The writ petition is misconceived and malafide.

The writ petition is, thus, 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.)