

05.09.2024
Court No.09
Item no.220 ML
CP

WPA No. 22343 of 2022

State Bank of India
Vs.
The State of West Bengal & Ors.

Mr. Om Narayan Rai
Ms. Deblina Lahiri
Mr. Mrinmoy Chatterjee
.... for the petitioner.

Mr. Somnath Ganguly
Mrs. Rupsha Chakrabarty
....for the State.

Mr. Reetobrata Mitra
Mr. Binay Kumar Jain
Mr. Piyush Jain
Ms. M. Ghosh

.....for the respondent no.6.

1. The petitioner, who is the secured creditor, has challenged several orders passed by the Chief Metropolitan Magistrate, Calcutta by reopening a disposed of proceeding under Section 14 of the SARFAESI Act. Mr. Rai, learned Advocate for the petitioner submits that the order was passed on December 12, 2014, directing delivery of physical possession of the mortgaged property in favour of the bank. Sometime in 2022, the bailiff had taken possession and handed over the property to the bank. Thereafter, the bank found out that the respondent No.6 had broken open the padlock affixed by the bank and had taken possession.

The bank approached the Shakespeare Sarani Police Station for necessary action. The police authorities did not take steps. Accordingly, WPA No.19879 of 2022 was filed by the bank challenging inaction of the police authorities. By an order dated September 14, 2022, a coordinate Bench allowed the prayer of the petitioner by directing the police authorities to remove the padlock of the respondent no.6 and affix a lock on behalf of the bank. Such procedure was completed.

2. Such order was challenged by the respondent no.6 before the Hon'ble Division Bench, on the ground that the said respondent was a tenant in respect of the premises in question, even before the SARFAESI proceedings had been initiated. Further submission was that the respondent no. 6 had already approached the Chief Metropolitan Magistrate for modification of the order. Upon taking cognizance of its possession and rightful claim as tenant, the order was also modified and the possession was restored. That S.A. 89 of 2011 was pending before the learned Debts Recovery Tribunal and the order delivery of possession would be subject to the decision in the SA.

3. The Hon'ble Division Bench dismissed the appeal, inter alia, coming to the following conclusions:-

- a) That the conduct of the respondent no. 6 was deplorable. The finding of the learned Single Judge that the respondent no. 6 had broken open the padlock and wrongfully entered into the property, was correct. Such finding was backed by the fact that the bailiff's report indicated that possession of the property was handed over to the bank.
- b) The Chief Metropolitan Magistrate had become functus officio and did not have any authority to proceed with the matter after the delivery of physical possession.
- c) The tenant had wrongly indicated to the court that a proceeding was pending before the Debts Recovery Tribunal, whereas the proceeding initiated before the Debts Recovery Tribunal by the borrower and the guarantor had been dismissed.

4. Mr. Mitra, learned advocate for the respondent no. 6 submits that an application for review is pending from the order of the Hon'ble Division Bench. He submits that the bank should have disclosed that the property was tenanted in its application under Section 14. The application

was liable to be rejected by the District Magistrate, for such suppression.

5. The Chief Metropolitan Magistrate also recorded that the order of taking over physical possession would be subject to possession of the tenant. The said order was not challenged by any party. The right of the tenant was protected even at that stage by the Chief Metropolitan Magistrate.
6. Mr. Mitra relies on several decisions of the Hon'ble Apex Court on the ground that a pre-existing tenant had a right to be protected even if the SARFAESI proceedings were initiated.
7. Learned advocate for the State respondents submits that the Chief Metropolitan Magistrate has not decided any issue. The Chief Metropolitan Magistrate had kept the matter in abeyance, to enable the tenant to get his right adjudicated. Under such circumstances, the orders impugned cannot be said to be devoid of merits.
8. Heard the parties. The bank had approached the High Court, challenging the inaction of the police in putting back the bank in possession by removing the padlock fixed by the respondent no. 6. In the said writ petition, certain factual aspects were taken note of by

the coordinate Bench and such order was passed after the orders dated August 5, 2022, August 16, 2022 and August 17, 2022 were passed by the Chief Metropolitan Magistrate in Misc. Case No. 35 of 2014, which are under challenge before this court. In the said order dated September 14, 2022, the coordinate Bench had directed the Shakespeare Sarani Police Station to put a padlock in the premises and seal the same in favour of the bank. The dispute between the bank and the tenant was left to be decided by the tribunal and it was directed that possession of the secured asset would abide by the order passed by the Debts Recovery Tribunal-II in S.A. No. 89 of 2011. The order of the learned Single Judge was carried in appeal.

9. This order was subsequently modified and CAN 1 of 2022 was disposed of with a direction upon the Shakespeare Sarani Police Station to hand over possession to the bank.
10. The Division Bench found that the Chief Metropolitan Magistrate, Calcutta had passed the order on December 12, 2014 under Section 14 of the Act for delivery of possession of the property. Thereafter, on an application by the bank, the Chief Metropolitan Magistrate had

passed the order dated September 21, 2021 directing breaking open of the padlock. In compliance of the order, physical possession of the property was delivered to the bank on July 29, 2022. The bailiff had also duly indicated this fact to the police authority vide a communication dated July 29, 2022. No materials were produced before the appeal court indicating that the bank had been informed by the borrower that the respondent no. 6 had ever been inducted as a tenant. By the order dated August 17, 2022, passed in Misc. Case No.35 of 2014, the Chief Metropolitan Magistrate once again directed restoration of possession to the respondent no.6. The appeal court recorded that the counsel for the respondent no. 6 had failed to point out the provision of law under which such order could be passed by the Chief Metropolitan Magistrate. Hence, the submissions of the counsel for the respondent No.6 on the basis of the judgments of the Hon'ble Supreme Court were not accepted and submissions of the bank were recorded and accepted.

11. The appeal court recorded that even assuming that the Chief Metropolitan Magistrate had

jurisdiction to pass the order of restoration, the respondent no. 6 had failed to demonstrate that the padlock of the respondent bank was removed by following due process of law and the respondent no. 6 was in possession of the premises.

12. There was no document indicating delivery of possession by the bank to the respondent no. 6, after the order was passed by the Chief Metropolitan Magistrate.
13. Under such circumstances, the Hon'ble Division Bench dismissed the appeal, inter alia, holding that the powers exercisable by the Chief Metropolitan Magistrate under Section 14 of the Act were ministerial and the said authority could not adjudicate the dispute between a borrower and a secured creditor or a third party. The conduct of the respondent no.6 was found to be doubtful in view of the report filed by the bailiff and the police authorities.
14. It also transpired during the hearing that the respondent no. 6 had filed a letter before the bank pursuant to the order dated August 17, 2022, requesting the bank to hand over possession. Thus, the fact that possession had not been handed over to the respondent No.6,

even though there was an order of the Chief Metropolitan Magistrate to restore possession to the respondent no. 6, was a specific finding of the Division Bench. It was noted that S.A. 89 of 2011 was dismissed even before the learned Single Judge had taken up the matter.

15. Under such circumstances, the orders passed by the Chief Metropolitan Magistrate dated August 5, 2022, August 16, 2022 and August 17, 2022 passed in Misc. Case No. 35 of 2014 are contrary to law. The order passed by the Hon'ble Division Bench on November 1, 2022, also records that the Chief Metropolitan Magistrate did not have the power to reopen the issue and restore possession to a third party. In this proceeding, such orders have been challenged. The same are set aside in the backdrop of the case as discussed hereinabove. Prayer (a) is allowed.

16. It is submitted by Mr. Mitra, that a review application is pending. The review application may be proceeded with in accordance with law and all the points raised by Mr. Mitra may be urged.

17. The application filed under Section 17 of the SARFAESI Act, by the respondent no. 6, if any,

will proceed independently and the consequence thereof will follow.

18. The writ petition 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.)