

ML 148
04.07.2024
Court. No. 9
GB

W.P.A. 23304 of 2023

Ms. Mita Ghosh & Anr.

Vs.

The District Magistrate, South 24 Parganas,
Revenue Munshikhana Department & Anr.

Mr. Prabir Kumar Ghosh,
Mr. Sandip Das

...for the Petitioners.

Mr. Anirban Pramanick,
Ms. Subhasree Dey

...for the State Bank of India.

1. The petitioners claim to be in possession of the property which is the subject matter of the notice dated September 7, 2023, issued by the authorized officer of the State Bank of India.
2. The petitioners allege that they are neither borrowers nor the guarantors. That earlier notice under Section 13(4) of the SARFAESI Act, 2002 (hereinafter referred to as the 'said Act'), had been withdrawn during pendency of an application under Section 17(1) of the said Act, before the learned Debts Recovery Tribunal. It is alleged that the bank cannot take any further step.
3. SA/ 229/2018 had been filed by the petitioner, challenging a notice under Section 13(4) of the said Act. The order passed by the District Magistrate under Section 14 of the said Act was challenged in I.A. 374 of 2020. As the notice under Section 13(4) had been withdrawn, both SA/229/2018 and IA 374 of 2020 were disposed of.

4. The petitioners contend that again an order was passed under Section 14 of the said Act by the District Magistrate and the bank has intimated the petitioners that possession will be taken. The petitioners have challenged such notice on the following grounds:-
 - a) Upon withdrawal of the earlier notice under Section 13(4) of the said Act, subsequent notice could not be issued.
 - b) The petitioners were neither the borrowers nor the guarantors.
 - c) Once SA/229/2018 was disposed of along with I.A.374 of 2020, the writ petition would be maintainable, as repeated harassment has been caused by the bank.
 - d) Another writ petition is also pending challenging a possession notice dated November 11, 2021.
5. The learned advocate for the bank submits that the earlier notice under Section 13(4) of the said Act was withdrawn as there were some technical errors. The law does not prevent the bank from issuing a proper and corrected notice once again. The bank had taken appropriate steps. The petitioners' remedy is before the appropriate forum.
6. Having heard the learned advocates for the respective parties, this Court is of the view that the bank can always issue another notice under Section 13(4) of the

said Act, upon withdrawal of the notice which was found to be erroneous. An order has been passed by the District Magistrate under Section 14 of the said Act. On the basis of the said order, the impugned notice has been issued. The bank has intimated the petitioners that possession will be taken. The petitioners are the heirs of one of the borrowers. The loan was sanctioned against deposit of title deed in respect of the property involved.

7. Under such circumstances and in view of the directions of the Hon'ble Apex Court time and again, this Court is of the opinion that the remedy of the petitioners lie before the learned DRT as the allegation of the petitioners do not fall within the exceptions appearing in paragraph 29 of the decision of the Hon'ble Apex Court in the matter of ***PHR Invent Educational Society*** versus ***UCO Bank and others*** reported in ***2024 SCC OnLine SC 528***. The same is quoted below:-

“29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) Where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
- (ii) It has acted in defiance of the fundamental principles of judicial procedure;*
- (iii) It has resorted to invoke the provisions which are repealed; and*
- (iv) When an order has been passed in total violation of the principles of natural justice.”*

8. Although, the petitioners submit that no notice under 13(4) was issued, it is the specific contention of the bank that the said notice had been issued. Even such challenge is available before the learned DRT. For a period of 10 days no coercive action shall be taken, to enable the petitioners to approach the learned DRT, in accordance with law and the question of limitation is kept open to be decided by the Tribunal.
9. Accordingly, the writ petition is disposed of.
10. However, there will be no order as to cost.
11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)