

D/L.45.
April 10, 2024.
MNS.

WPA No. 23655 of 2022
+
CAN 1 of 2023

Anihshesh Chakrabarti
Vs.
Union of India and others

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta

... for the petitioner.

Mr. Dipankar Das

...for the respondent nos. 2 and 3.

1. The writ petition has been preferred against an order passed by the Recovery Officer, Debts Recovery Tribunal-III, Kolkata who, in implementation of an order dated February 24, 2020 passed in O.A. No. 655 of 2017 by the said Tribunal, has passed an order of attachment against the petitioner.
2. Learned counsel for the respondent nos. 2 and 3 objects to the maintainability of the writ petition in view of availability of an appeal under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (1993 Act).
3. Learned counsel for the petitioner contends that the Recovery Officer acted *de hors* his authority, since under Section 7 of the 1993 Act, the Recovery Officer has been enumerated as an officer/employee of a

Tribunal discharging his functions under the general superintendence of the Presiding Officer.

4. Learned counsel for the bank submits at this that the order was passed within the contemplation of the authority conferred on the Recovery Officer in implementation of the order of the Tribunal itself.
5. Learned counsel for the bank also points out that there is a mandatory statutory pre-requisite of deposit of 50-25% of the decretal amount in case an appeal is preferred before the Appellate Tribunal, to avoid which, the present writ petition has been taken out.
6. It transpires from the impugned order passed by the Recovery Officer that the said Officer was merely implementing the order of the Tribunal dated February 24, 2020 passed in O. A. No. 655 of 2017.
7. In Clause (4) of the ordering portion of the Tribunal's order, it is clearly stipulated that in case the defendant fails to pay the dues within the mentioned time thereinabove, the applicant bank is entitled to recover its dues by sale of secured assets, if any. The applicant-bank is also entitled to proceed against the personal properties of the defendant (both movable and immovable) and

also proceed against the defendant personally to recover the dues in accordance with law.

8. A perusal of the impugned order shows that the Recovery Officer acted within the confines of such direction of the Tribunal and as such, there is no palpable violation of jurisdiction to call for interference under Article 226 of the Constitution of India.

9. In any event, the merits of the challenge are not entered into since the remedy of the petitioner lies before the appellate forum.

10. Accordingly, WPA No. 23655 of 2022 and CAN 1 of 2023 are disposed of by granting liberty to the petitioner to prefer a challenge against the impugned order before the Appellate Tribunal. If such a challenge is made, the Appellate Tribunal shall decide the same in accordance with law and subject to deposits being made in terms of law, independently, without being influenced in any manner by any of the observations made herein.

11. There will be no order as to costs.

12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)