07.10.2024
Sl. No.14(DL)
srm

W.P.A. No. 25352 of 2024

Siddhartha Mitra & Anr.

Versus

Punjab National Bank & Ors.

Mr. Arijit Bardhan,
Ms. Saheli Bode
…for the Petitioners.

Ms. Deblina Lahiri,
Ms. Samapti Ray
…for the PNB.

Affidavit-of-service is taken on record.

The first issue involved in this writ petition is whether co-sharers of the property could be asked by the bank to handover possession of the property, in the absence of any order against them. The other issue is whether non-service of the District Magistrate's order would create a right upon the co-sharers to challenge the steps taken by the bank, by filing a writ petition.

Mr. Bardhan, learned Advocate appearing for the petitioners relies on the decision of the learned coordinate Bench in the matter of Deecon India Pvt. Ltd. & Ors. vs. Canara Bank & Ors. reported in AIR 2023 (NOC 404) 144. Mr. Bardhan also relies on the decision of Indian Bank vs. D. Vishalakshi reported in (2019) 20 SCC 55.

Mr. Bardhan submits that in Deecon Indian Pvt. Ltd. (supra), a coordinate Bench held that unless the person received a copy of the order of the District Magistrate, the period of limitation to file an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) would not run.

With regard to the decision in D. Vishalakshmi (supra), Mr. Bardhan submits that any person aggrieved by an order of the District Magistrate had an option, either to challenge the order by seeking judicial review or by filing an application under Section 17 of the SARFAESI Act. Mr. Bardhan submits that the alternative remedy would not be a bar in this case, as the order of the District Magistrate was not supplied to the petitioners. The petitioners rely on various documents written to the bank in this regard.

Learned Advocate for the Bank submits that in paragraph 8 of the said writ petition, the petitioners admit that the order of the District Magistrate was served upon the original borrower, who had mortgaged the property. The claim of the petitioners as co-sharers, is the subject matter of a civil suit, but no decision has been arrived at by the civil court. The property was mortgaged by the borrower.

The fact that the property was mortgaged, is not in dispute. The petitioners are aggrieved persons. Any aggrieved person can approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The petitioners have the liberty to do so. The petitioners shall approach the tribunal in accordance with law. A copy of the order of the District Magistrate, has been handed over by the learned Advocate for the bank, to the petitioners' advocate on record.

As there is a specific averment in the writ petition that the original borrower was served with a copy of the order of the District Magistrate and the order remained unchallenged, the issue of limitation will also be decided by the Debts Recovery Tribunal. All points raised by either party, are kept open.

The bank will not take any coercive measures as regards possession of the area allegedly occupied by the petitioners, till November 5, 2024.

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.)