

12.11.2024

Sl. 13

Ct.No. 14

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27110 of 2024

M/s. G.K. Communication & Ors.

Vs.

Union Bank of India & Anr.

Mr. Arindam Banerjee

Mr. Shabbir Ali Mirza

Mr. Knity Keshni

...for the petitioners

Mr. Pankaj Kumar Mukherjee

Mr. Indrajit Bhattacharya

Mr. Sudip Naskar

...for the Bank

1. Affidavit of service filed by the petitioners is taken on record.
2. The petitioners are aggrieved by the auction notice dated 14th October, 2024 issued by the bank for holding e-auction of the mortgaged asset on 13th November, 2024 in compliance of the direction passed by the Debts Recovery Appellate Tribunal at Kolkata in Misc. Appeal No. 19 of 2024.
3. It appears that judgment was passed in the appeal by the Appellate Tribunal on 13th August, 2024.
4. The judgment records that notices were issued to the respondents i.e., the writ petitioners/SARFAESI applicants and the

notices were duly served, but none represented the respondents.

5. The Tribunal proceeded to decide the issue ex parte and was pleased to set aside the order dated 27th February, 2024 passed by the learned Judge, Debts Recovery Tribunal-III Kolkata in SA 102 of 2021. The Appellate Tribunal directed that the bank would be at liberty to proceed in accordance with law.
6. Specific contention of the petitioners is that no notice of appeal was served upon them. The order passed by the Debts Recovery Tribunal was a contested one. The Appellate Tribunal ought to have granted opportunity to the writ petitioners to defend their case.
7. Learned counsel representing the bank has produced copy of the order nos. 1-6 passed in the appeal in support of the submission that notices were duly served upon the writ petitioners. The writ petitioners had enough opportunity to defend their case before the appellate forum, but they chose to remain absent. It has been submitted that huge sum of money is due and payable by the petitioners.
8. It appears that there is a clear recording by the appellate forum that notices were duly served upon the respondents and an affidavit of

service has also been filed before the said authority.

9. Despite such recording, the learned advocate representing the petitioners strenuously asserts that no notice whatsoever was served upon his clients. Had the petitioners got knowledge of the appeal, they would have certainly contested the same and would have tried to defend the order passed by the Recovery Tribunal.
10. Only to give one opportunity to the writ petitioners to ascertain service of notice upon them at the appellate stage, the Court intends to interfere in the matter to a limited extent.
11. The writ petitioners are granted liberty to approach the appellate forum by 19th November, 2024.
12. The appellate forum will only revisit the issue of service of notice of appeal upon the writ petitioners. If it appears that the writ petitioners were duly served, but they deliberately chose not to appear at the appellate stage, then the judgment passed by the Tribunal shall hold good.
13. If it is found that proper notice was not served upon the petitioners, then it will be open for the appellate authority to revisit the whole issue of the appeal all over again.

14. The Debts Recovery Appellate Tribunal is requested to consider the prayer of the writ petitioners within a period of four weeks from the date of filing the application before the Appellate Tribunal.
15. The bank is restrained from proceeding any further with the auction notice dated 14th October, 2024 till 27th December, 2024 or till order is passed by the Appellate Tribunal in this regard.
16. It is made clear that this Court has not entered into the merits of the appeal at all. If the petitioners fail to overcome the issue of notice before the Appellate Tribunal, then it will be open for the petitioners to agitate the other points in the impugned judgment before the competent forum in accordance with law, if so advised.
17. The writ petition stands disposed of.
18. All parties are to act in terms of the copy of this order downloaded from the official website of this Court.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after observing all legal formalities.

(Amrita Sinha,J.)