

22nd January,
2024
(AK)
22

W.P.A 25877 of 2023

Ramchandra Prasad and others
Vs.
The State of West Bengal and others

Mr. Prosenjit Mukherjee
Mr. Jahangir Hossain
...for the petitioners.

Mr. Abhishek Banerjee
...for the respondent nos.6 & 7.

1. Learned counsel for the petitioners, with leave of court, files a supplementary affidavit pointing out that in the meantime the Bank has issued a notice for auction sale of the secured asset.
2. The petitioners, who are borrowers, submit that the petitioners are willing to pay off the debt due to the Bank but require some time to do it.
3. The present challenge has been preferred at a stage when Section 14 of the SARFAESI Act proceedings were undertaken by the Bank.
4. Learned counsel for the Bank points out that already there is a pending application under Section 17 at the behest of the petitioners/borrowers.
5. In the meantime, the Bank has already issued a notice for auction sale in terms of the provisions of

the SARFAESI Act and the 2002 Rules framed thereunder.

6. Thus, there is no scope at this juncture to accede to the prayer of the petitioners.
7. A perusal of the petitioners' pleadings as well as upon hearing learned counsel for the parties and looking into a declaration allegedly made by the petitioners at the behest of the Bank to the effect that the petitioner would repay the amount asking the Bank to defer the auction sale, I am of the opinion that the bank did its best in actually deferring the auction sale on the request of the petitioners.
8. However, the writ court cannot interfere at this juncture primarily on two counts. First, since a pending application under Section 17 of the SARFAESI Act is already sub-judice before the Debts Recovery Tribunal having jurisdiction, the petitioners cannot have the advantage of forum shopping before two parallel forums on the same grievance.
9. It is not merely a question of availability of equally efficacious alternative remedy but the petitioners having elected one of the remedies by moving an application under Section 17 of the SARFAESI Act prior to the moving the writ petition.

10. Secondly, in law, since the Bank has already issued a notice of auction sale, technically the petitioners' right to foreclose has been closed.
11. Even then, if the petitioners show their bona fides and are able to convince the tribunal on such count in the pending proceeding, it will be open to the Debts Recovery Tribunal to pass necessary orders if the Tribunal so deems fit in accordance with law.
12. However, there is no scope for the writ court to interfere at this juncture.
13. Accordingly, WPA 25877 of 2023 is disposed of without interfering with the impugned action of the Bank but leaving it open to the petitioners to urge all points before the Debts Recovery Tribunal which is the competent forum in that regard and shall decide the same in accordance with law in the application of the petitioners pending under Section 17 of the SARFAESI Act, 2002.
14. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)