

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 27743 of 2024

Mohammad Arman
Versus
ICICI Bank Limited & Ors.

For the petitioner	Mr. Arindam Banerjee, Sr. Adv Ms. Kriti Keshri
For the respondent.1	Mr. Avishek Guha Ms. E. Guha Mr. Ankush Majumder
For the State	Mr. Joydip Banerjee Ms. Sharmila Deb

Heard on : 03.12.2024

Judgment on : 03.12.2024

JAY SENGUPTA, J:

This is an application praying for declaring the petitioner's pre-mortgage tenancy of 2300 sq. ft. on the second floor of premises no. 1, Allenby Road, P.S. – Bhawanipore, Kolkata 700 020 and the petitioner's possession in respect thereof cannot be affected by any action or order

under the SARFAESI Act and for declaring that the action or order under the said Act or any other step taken in execution thereof is null and void.

Copy of the report as supplied by the learned counsel for the State is taken on record.

Learned senior counsel representing the petitioner submits as follows. Since 2015, the petitioner had been a tenant of the original borrower at the first floor of the said premises along with others. He has rent receipts, trade licence and bank accounts at the said address to evince his rights in respect of the property. According to the decision of the Hon'ble Apex Court in reported at (2014) 6 SCC 1, an existing encumbrance has to be a part of an application under Section 14 of the SARFAESI Act. In fact, the DM has to adjudicate the same. Here, the petitioner's tenancy was possibly not even reported. On this, reliance is also placed on a decision of the Hon'ble Apex Court reported at (2016) 3 SCC 762 and of a Division Bench of this Court reported at AIR 2016 Cal 176. The ratios in these judgments have not been rendered infructuous by the introduction of Section 17 (4) A to the said Act. Although the petitioner may ventilate such grievances before the Tribunal, when the opportunity of hearing which is an integral part of principles of natural justice is violated, the petitioner can fairly approach this Court. On this, reliance may be placed on a decision in Whirlpool Ltd. Case reported at (1998) 8 SCC 1. The first time the petitioner became aware of such an action on the part of the bank was when a notice dated 13.11.2024 was affixed at the premises. There the addressees were referred as Safron Designers

Consciencess Private Ltd. & others. Not only had the tenancy, perhaps, not been reported, consequently, even the adjudication that was to be done by the DM was not done.

Learned counsel appearing on behalf of the respondent bank denies the allegations made in the writ petition, takes up a point of maintainability and submits as follows. Since the introduction of Section 17 (4) A to the SARFAESI Act, the petitioner can agitate all his grievances before the Tribunal. It is true that the borrower did not report any such tenancy as that of the petitioner to the financier. If at all, the alleged tenancy is true and valid one, the petitioner can fairly take up the point before the learned Tribunal. Reliance is placed on decision of the Hon'ble Apex Court reported at (2010) 8 SCC 110.

Thus, it is quite clear that the alleged tenancy was not reported to the financier. Therefore, it can fairly be said that the petitioner's right to be heard has purportedly been violated.

At this stage, learned counsel appearing on behalf of the respondent bank submits that if the petitioner wants to approach the Learned Tribunal, within 3 days from tomorrow, the bank would not be taking any further steps in this regard for the said period of 3 days from tomorrow.

Therefore, let the bank authorities transmit a copy of the application under Section 14 of the SARFAESI Act along with the order passed by the DM to the petitioner through his learned advocate on record forthwith, which shall positively be by tomorrow i.e., 04.12.2024 at 11 AM.

Accordingly, I dispose of the writ petition by granting liberty to the petitioner to approach the learned Tribunal with his grievances forthwith.

Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J)