30th January, 2024
(AK)
26

W.P.A 28356 of 2023

State Bank of India and another
Vs.
The State of West Bengal and others

Mr. Debashis Saha
Mr. P. Bhattacharya
...for the petitioners.

Mr. Amitesh Banerjee, Ld. Sr. St. Counsel
Mr. Tarak Karan
...for the State.

1. Affidavit-of-service filed in court today be kept on record.
2. The present challenge has been preferred by the petitioner-Bank against an order rejecting the Bank's application under Section 14 of the SARFAESI Act, 2002.
3. The sole premise of such rejection was that, as per the District Magistrate, Birbhum, Suri, the accompanying affidavit and documents filed with the application revealed that the notice under Section 13(4) of the SARFAESI Act was served on the borrower by hand and by affixing the same in conspicuous place of the property as well as by publishing the same in two dailies; however, since the record did not disclose that the notice had been served also through electronic mode, the District

Magistrate held that he/she was not satisfied with the contents of the affidavit and documents and rejected the application under Section 14.

4. As rightly argued by learned counsel for the Bank, Rule 8 of the Security Interest (Enforcement) Rules, 2002 is clear on the issue.

5. Rule 8(2A) stipulates that all notices under the Rules “may also” be served upon the borrower through electronic mode of service “in addition to” the modes prescribed under sub-Rule 1 and sub-Rule 2 of Rule 8.

6. Hence, it is evident from the said provision that service through electronic mode is optional and an additional mode over and above the other modes of service, which have all been exhausted in the present case.

7. Hence, for non-service through electronic mode, the affidavit accompanying an application under Section 14 cannot be said to be vitiated.

8. Thus, the entire premise of the rejection by the District Magistrate was erroneous and contrary to law.

9. Accordingly, WPA 28356 of 2023 is allowed, thereby setting aside the order dated October 13, 2023 whereby the District Magistrate, Birbhum, Suri had refused to pass any order under Section 14 of the SARFAESI Act. The District Magistrate is directed

to dispose of the petitioners-Bank's application under Section 14 within a week from the date of communication of this order to the District Magistrate afresh, in the light of the observations made above.

10. 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.)