

16th January,
2024
(AK)
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W.P.A 28568 of 2023

Tata Capital Financial Services Limited
Vs.
The State of West Bengal and others

Mr. Avishek Guha
Ms. Sonal Agarwal

...for the petitioner.

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...for the State.

1. Affidavit-of-service filed in court today be kept on record.
2. Despite substantial service, none appears for the respondents apart from the State.
3. The present challenge has been preferred against an order passed by the District Magistrate staying his/her order dated March 31, 2022 passed under Section 14 of the SARFAESI Act, 2002 in favour of the petitioner.
4. The petitioner/non-Banking Financial Institution obtained the original order under Section 14 upon compliance of all formalities.
5. It is argued by learned counsel for the petitioner that the District Magistrate does not have any authority in law to stay his/her own order, since the District Magistrate, upon passing an order under Section 14, becomes *functus officio*.

6. In the circumstances of the present case, the borrower had taken out a challenge before the Debts Recovery Tribunal but could not obtain any interim order before the said Tribunal.
7. A challenge had also been preferred against the same order under Section 14, apparently in a writ petition before this court which has been kept pending all along.
8. By the impugned order dated August 23, 2022, the District Magistrate proceeded on the premise that since a challenge is pending before this court, he/she found it appropriate to stay further execution of the order dated March 31, 2022 for the period of one month.
9. A perusal of Section 14 of the SARFAESI Act, 2002 indicates that the said provision is merely by way of an administrative authority vested in the Magistrate to implement the order to which a Financial Institution/Bank is entitled under the SARFAESI Act, 2002.
10. The District Magistrate does not have power akin to an executing court under Order XXI of the Code of Civil Procedure and/or any such parallel power to adjudicate or pass any incidental order reviewing its own order, recalling its own order and/or even staying its own order.

11. In fact, as rightly contended by the petitioner, the District Magistrate becomes *functus officio* once it disposes of the application under Section 14 of the SARFAESI Act as in the present case.
12. In view of the above discussions, the impugned order dated August 23, 2022 whereby the District Magistrate stayed the execution of his/her own order dated March 31, 2022 is palpably without jurisdiction and *de hors* the law and thus, is amenable to be set aside.
13. Accordingly, WPA 28568 of 2023 is allowed, thereby setting aside the order dated August 23, 2022 passed by the Chief Judicial Magistrate, Alipore in Miscellaneous Case no. 520 of 2022.
14. It will be open to the petitioner to take all steps as permissible in law to have the order dated March 31, 2022 implemented at the earliest.
15. There will be no order as to costs.
16. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)