

AD-26
Ct. No. 36
19.07.2024
TN

WPA 29084 of 2023
CAN 1 of 2024

Indian Overseas Bank and another
Vs.
State of West Bengal and others

Ms. Amrita Pandey,
Ms. Sangita Misra

.... for the petitioners

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

....for the State

Ms. Sarmila Das

....for the Applicant

In Re: CAN 1 of 2024

1. The present modification application has been filed for recall of an order dated January 25, 2024 passed in WPA No. 29084 of 2023.
2. Affidavit-of-service is kept on record. Both sides are represented through counsel.
3. The applicant submits that the applicant was hospitalized at the relevant point of time when a copy of WPA 29084 of 2023 was sought to be served and, as such, was unaware of the pendency of the proceeding. Only subsequently did the applicant come to know of the same from the notice of auction which was served on the applicant.
4. The plinth of the contentions of the applicant otherwise is that the property-in-question is an agricultural land and, as such, falls outside the

purview of the SARFAESI action under the SARFAESI Act, 2002.

5. Upon hearing learned counsel for the parties, however, it appears from the order dated January 25, 2024 that it was recorded by the court that affidavit-of-service had been filed on that date, despite which none appeared for the private respondents, including the present applicant. There is no reason to disbelieve the said recording without any cogent rebuttal evidence. That apart, since as per admission of the applicant, the applicant was not at home at the relevant point of time, and the service was effected at the known address of the applicant, it cannot be said that the order dated January 25, 2024 is vitiated for improper service.
6. That apart, the argument as to the SARFAESI Act not being applicable cannot be decided by a District Magistrate while hearing an application under Section 14 of the said Act or this court sitting in writ jurisdiction for the limited purpose of directing the Magistrate to comply with the statutory timelines in disposing of such an application.
7. At this juncture, learned counsel for the applicant also seeks to argue that the quantum of loan taken by the applicant was misrepresented by the bank. However, the same logic as above applies to such argument as well, since it is not open for a District Magistrate under Section 14 to decide such issues on merits.

- 8.** The remedy of the applicant, if any, lay before the appropriate Debts Recovery Tribunal by way of a proper challenge under the provisions of the SARFAESI Act, 2002. Having not availed of such remedy, the applicant's present application seeking modification of an order dated January 25, 2024 is not maintainable.
- 9.** In any event, there is limited or no scope of modification/recall of an order which conclusively decided a writ petition, unless any grounds of review are made out.
- 10.** In the present case, there is no error apparent on the face of record and/or discovery of new matter pleaded or proved by the applicant for this court to re-consider its order dated January 25, 2024.
- 11.** Moreover, no rights were decided by the said order and only directions were passed for the District Magistrate to comply with the timelines as provided in Section 14 of the SARFAESI Act, 2002. Thus, there is no scope of interference with the said order in the present application.
- 12.** Accordingly, CAN 1 of 2024 is dismissed on contest without, however, any order as to costs.
- 13.** Since no affidavits have been invited, it is deemed that none of the allegations made by the applicant either in the petition or during arguments are admitted by the respondents.

(Sabyasachi Bhattacharyya, J.)