

OD -7

ORDER SHEET

WPO/422/2024

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KOTAK MAHINDRA BANK LIMITED

VS

THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 25th June, 2024.

Appearance:

Mr. Aniruddha Chatterjee, Adv.

Mr. Pratik Ghose, Adv.

Mr. Avishek Roy Chowdhury, Adv.

...For the Petitioner

Mr. Aditya Kanodia, Adv.

Ms. Shreya Trivedi, Adv.

...For Happy & Lon Pvt. Ltd.

The Court: The order dated January 17, 2024 passed by the Chief Metropolitan Magistrate, Calcutta in MISCS CASE No. 157 of 2023 corresponding application no. 57 of 2023 and Filing No. 129686 of 2023, is under challenge.

It appears that the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI in short) was filed by the petitioner i.e. banking company for necessary direction to obtain physical possession of the secured asset as

described in the schedule of the application. The schedule of the application is quoted below :

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Schedule of property

Movables & Immovable Properties Charged/Mortgaged by Bells Control Limited

“Bells House” at 21, Camac Street, Kolkata – 700 016, from 7th to 10th Floor and the roof and butted and bounded in the manner following that is to say :

On the North - by 22, Camac Street

On the East - by 6, Wood Street

On the south - partly by 20/2, Camac Street and Partly by
20/1, Camac Street

On the West _ by the remaining portion of 2, Camac Street.

Movable assets lying at “Bells House” at 21, Camac Street, Kolkata – 700 016, from 7th to 10th Floor and the roof.”

It appears that the said application was not entertained by the Court for the reason that the property was the subject matter of CP 808 of 2016 and the Assistant Official Liquidator, High Court, Calcutta had sent a letter addressed to Sh. Parag B. Dholakia, The Executive Vice President & Authorized Officer, Kotak Mahindra Bank Ltd., 6th Floor, C12, G-Block, BandraKurla Complex Bandra (East), Mumbai-40051 requesting the office to arrange for handing over vacant, peaceful and uninterrupted possession of the plot measuring about

6685.30 sqm.,at Transport Depot Road which was in symbolic possession and not in the actual possession of the office.

Mr. Chatterjee, learned advocate submits that the learned Chief Metropolitan Magistrate misconstrued the application and passed the order without application of mind. The property described in the said application, which is allegedly a secured asset, did not have any connection with CP 808 of 2016. The question of the Port Trust having any claim over such property, would not arise. Moreover, the address has been mentioned in the order as Transport Depot Road,althoughthe property is situated atCamac Street.

In the application filed by the petitioner, the property has been described.The same has been quoted above. Even if Chief Metropolitan Magistrate was of the view it was the same property in respect of which CP 808 of 2016 is pending, reasons for coming to such conclusion should have been disclosed.The identity of the property was required to be verified before rejecting the said application outright. Why the property mentioned in the application was found to be same as that of Transport Depot Road or why the property was found to be a part of CP 808 of 2016,are also not available from the order.

The contentions of the intervenor/registered lessee with regard to the locus of the bank and the eligibility of the bank to pray for orders under Section 14 of the SARFAESI Act are beyond the scope of this writ petition.As the order impugned does not deal with any of these issues, such issues are irrelevant. The order impugned is set aside.

Application filed by the petitioner being MISCS Case No. 157 of 2023 shall be reheard by the learned Chief Metropolitan Magistrate and disposed of within three months. The Official Liquidator may be called to clear any doubt or confusion. An order will be passed considering the issue which has been discussed hereinabove and all other issues relating to maintainability, adjudicability and grant of necessary relief under Section 14 of the SARFAESI Act. All points shall be decided in accordance with law.

WPO 422 of 2024 is disposed of accordingly.

(SHAMPA SARKAR, J.)

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