OCD-23

ORDER SHEET

AP-COM/726/2024

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

TATA CAPITAL HOUSING FINANCE LIMITED
VS
SURESH KUMAR SINGHANIA AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 27th August, 2024.

<u>Appearance:</u>
Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.
Ms. Indrani Majumder, Adv
…for the petitioner

Mr. Shaswat Nayak, Adv.
…for the respondent

The Court: Affidavit of service filed today be kept on record.

Learned counsel for the petitioner submits that the petitioner has already taken steps against the respondent/borrowers for enforcement of the debt owed by the borrower to the petitioner by taking out proceedings within the contemplation of Section 13 of the SARFAESI Act.

In order to secure the principal amount of loan, the present application has been filed by the creditor/petitioner.

Learned counsel appearing for the petitioner contends that by virtue of an order of status quo passed by the Debts Recovery Tribunal, the petitioner cannot deal with the property which comprises the secured asset, and that possession has been taken within the contemplation of Section 13(4).

Learned counsel for the respondents, apart from submitting that the amount of claim is disputed, points out that by virtue of Section 13(13) of the SARFAESI Act, no borrower shall, after receipt of notice referred to in Section 13(2), transfer by way of sale, lease or otherwise (otherwise than in the ordinary course of business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

As such, it is contended that the creditor/petitioner is already sufficiently protected.

Insofar as the quantification of the claim is concerned, it is contended by the respondents that the same should be left open for the parties to be urged before the arbitral tribunal, as and when the matter is referred to arbitration.

Upon hearing learned counsel, what is clear before the Court is that already the creditor/petitioner's interest is sufficiently protected by virtue of having taken possession of the secured asset under Section 13(4) of the SARFAESI Act, coupled with the status quo order passed by the Tribunal, which restrains both parties from dealing with the secured asset in favour of third parties in the meantime.

As such, I do not find any additional layer of protection being needed by the creditor at this juncture which, if granted, might tantamount to executing the claim of the petitioner before reference to arbitration.

In such view of the matter, this Court does not find any necessity or scope of granting any interim order as prayed for in the present application.

Accordingly, AP-COM/726/2024 is dismissed on contest.

However, it is made clear that it will be open to the parties to refer the dispute to arbitration and, if so referred, nothing in the above observations shall be treated to be binding between the parties and it will be left to the parties to agitate all points before the learned Arbitrator, who will be free to decide on all issue independently without being unnecessarily influenced by any observation made herein.

Furthermore, the petitioner will be at liberty to renew the prayer made in the present application under Section 17 before the arbitral tribunal, as and when constituted.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

bp/R.Bhar