

ORDER SHEET

AP-COM/727/2024

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

TATA CAPITAL HOUSING FINANCE LIMITED
VS
SHUBHASHISH TRIPATHI AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 27th August, 2024.

Appearance:

Mr. Sayak Ranjan Ganguly, Adv.

Ms. Srijani Ghosh, Adv.

Ms. Indrani Majumder, Adv

...for the petitioner

Mr. Souma Subhra Ray, Adv.

Ms. Susmita Saha, Adv.

...for the respondents

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

An adjournment is sought for by the respondent. However, in view of the nature of the order proposed to be passed, such prayer is refused.

Upon hearing learned counsel for the petitioner/creditor, it is evident that the petitioner has already taken steps for implementation of the petitioner's claim of debt against the respondent/borrower by taking measures under Section 13(4) of the SARFAESI Act.

It is submitted by learned counsel for the petitioner further that the respondent/borrower is already enjoying an order of status quo in respect of the secured asset from the Debts Recovery Tribunal.

Thus, what transpires is that the creditor has already taken measures under Section 13(4) and taken possession of the secured asset. A further layer of protection has been granted by the Tribunal by passing an order of status quo which restrains either party from dealing with or creating third party interest in respect of the secured asset.

Hence, I do not find any justification for granting further protection to the creditor/petitioner, which would, in the circumstances, tantamount to execution of the claim before reference to arbitration.

Thus, AP-COM/727/2024 is dismissed without any order as to costs.

It is made clear that this Court has not entered into the merits of the contentions of the parties and it will be open to both parties to urge all points before the arbitral tribunal, as and when constituted. The Tribunal shall decide all issues independently in accordance with law without being unnecessarily influenced by any observation made above.

It is further made clear that it will be open to the petitioner to renew the self-same prayer as made in the present application under Section 17 of the 1996 Act before the arbitral tribunal.

(SABYASACHI BHATTACHARYYA, J.)