

Sl.71
16.05.2025
Court No.6
BP

C.O. 1569 of 2025

Samir Dey & Anr.
-versus-
IDFC First Bank Limited & Anr.

Mr. Srijib Chakraborty
Mr. Amit Singh
..for the petitioners

Mr. Shibnath Bhattacharya
Mr. Shounak Mondal
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the borrower and is directed against an order dated 12th March, 2025 passed by the learned Debts Recovery Appellate Tribunal, Kolkata in Misc. Appeal No. 83 of 2024.

The petitioners herein challenged the order dated 22nd August, 2023 passed by the learned Chief Judicial Magistrate, North 24 Parganas under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short "SARFAESI Act") by filing an application under Section 17 of the SARFAESI Act being S.A. 217 of 2023 before the learned Debts Recovery Tribunal-III, Kolkata (for short "D.R.T."). Before the learned D.R.T. a specific objection was raised by the petitioners that there is no provision for appointment of the advocate of the bank as an authorized officer to

take physical possession of the property on behalf of the learned Chief Judicial Magistrate. The learned D.R.T. by an order dated 26th June, 2024 after going through the materials on record found that the learned Chief Judicial Magistrate has appointed the advocate on record of the bank as an authorized officer and was of the prima facie view that the order dated 22nd August, 2023 passed by the learned Chief Judicial Magistrate, North 24 Parganas suffers from gross infirmity or irregularity. On the basis of such prima facie observation the learned D.R.T. directed the bank not to take any coercive steps in respect of the secured property on the basis of the order dated 22nd August, 2023 without the leave of the learned D.R.T.

Being aggrieved by the order dated 26th June, 2024 passed by the learned D.R.T., the bank/opposite party herein preferred an appeal being Misc. Appeal No. 83 of 2024 before the learned Debts Recovery Appellate Tribunal at Kolkata (for short "DRAT"). The learned DRAT allowed the appeal on the ground that no material could be placed in the appeal to substantiate that Mr. Bhattacharjee was the advocate on record of the secured creditor either before the learned Chief Judicial Magistrate or before the learned D.R.T.

The learned advocate appearing for the petitioners draws the attention of the Court to the application filed under Section 14(1) of the SARFAESI Act before the learned Chief Judicial Magistrate at Barasat wherefrom it appears that Mr. Bhattacharjee was the advocate of the bank. It further appears from the affidavit filed along with the application under Section 14 that Mr. Bhattacharjee was the learned advocate for the bank. A letter issued by Mr. Bhattacharjee dated 12th April, 2025 and addressed to the petitioners would also go to show that Mr. Bhattacharjee is the learned advocate of the bank.

On a query of the Court Mr. Shibnath Bhattacharya, learned advocate appearing for the bank, in his usual fairness, submits that Mr. Abhishek Bhattacharjee who was appointed as the authorized officer by the learned Chief Judicial Magistrate is an advocate of the bank and he filed the application under Section 14 before the learned Chief Judicial Magistrate.

From the materials placed on record this Court is of the considered view that Mr. Bhattacharjee was the advocate on record of the secured creditor before the learned Chief Judicial Magistrate, North 24 Parganas.

In view thereof, this Court finds that the learned DRAT was not right in holding that there is

no material to show that Mr. Bhattacharjee was the advocate on record of the secured creditor.

For such reason, this Court is inclined to interfere with the order dated March 12, 2025 passed by the DRAT. Accordingly, the order dated 12th March, 2025 passed by the DRAT is set aside. The Miscellaneous Appeal No. 83 of 2024 is restored to the file of the learned Debts Recovery Appellate Tribunal at Kolkata.

The learned Debts Recovery Appellate Tribunal, Kolkata is requested to fix a date of hearing of such appeal and to dispose of the same in accordance with law as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observations and directions, C.O. 1569 of 2025 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)