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WPA 21184 of 2021

Ms. Mita Ghosh & Ors.
Vs.

The Authorized Officer, State Bank of India

Mr. Prabir Kumar Ghosh
Mr. Sandip Das
Mr. Mit Guha Roy
... for the petitioners

Ms. Deblina Lahiri
Mr. Mrinmoy Chatterjee
... for the respondents

The present writ petition has been filed challenging the legality of the possession notice dated 11th November, 2021, issued by the concerned respondents.

At the outset, Ms. Lahiri, learned Advocate appearing for the respondents, raised the issue of maintainability of the present writ petition. She submits that an initial action for recovery of dues from the borrower, by issuance of a notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, *SARFAESI Act*), was taken in respect of the secured asset as far back as 23rd April, 2018. However, that possession notice was subsequently withdrawn.

Thereafter, a fresh notice under Section 13(4) of the SARFAESI Act, commonly known as the possession notice, was issued on 11th November, 2021. Challenging the legality of that notice, the present writ petition has been filed.

She further submits that during the pendency of this

writ petition, possession of the secured asset was taken by the District Magistrate in exercise of powers under Section 14 of the SARFAESI Act. Challenging that action, the petitioner filed a writ petition being WPA 23304 of 2023. However, that writ petition was dismissed on the ground that it had been filed without exhausting the efficacious alternative remedy.

Aggrieved by the said order, the petitioner preferred an intra-court appeal being MAT 1477 of 2024, which was also dismissed, thereby upholding the order of the learned Single Bench.

Thereafter, the petitioner filed an application under Section 17 of the SARFAESI Act. Ms. Lahiri points out that the entire factual matrix was initially brought to the notice of the learned Debt Recovery Tribunal by preferring an application, which was registered as S.A. 229 of 2018. However, since the earlier notice issued under Section 13(4) had been withdrawn, the said application was also disposed of accordingly.

Challenging the subsequent action taken by the District Magistrate under Section 14 of the SARFAESI Act, the petitioner has filed another application before the learned Tribunal, which has been registered as S.A. 800 of 2024. Referring to an order dated 16th January, 2025, she submits that the said application is still pending final adjudication before the Tribunal.

Admittedly, the secured creditor issued a possession notice under Section 13(4) of the SARFAESI Act, 2002.

Subsequently, possession was taken by invoking the provisions of Section 14 of the SARFAESI Act. The petitioner has challenged that action of the secured creditor by preferring an application, being S.A. 800 of 2024, before the learned Tribunal, which is still pending final adjudication.

In the judgment reported in (2010) 8 SCC 110 (*United Bank of India vs. Satyawati Tondon & Ors*), the Hon'ble Supreme Court strongly deprecated the practice of entertaining writ petitions where an efficacious alternative remedy is available to an aggrieved person under the SARFAESI Act before the Debt Recovery Tribunal. The Hon'ble Court observed that if, despite the availability of such a remedy, a writ petition is entertained and the recovery process is stalled, the very object of enacting the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act would be frustrated.

This view has subsequently been reiterated by the Hon'ble Supreme Court in a catena of decisions. Reference may be made, for instance, to the decision reported in (2011) 2 SCC 782 (*Kanaiyalal Lalchand Sachdev & Ors. vs. State of Maharashtra & Ors.*) in support of this position.

Therefore, in view of the existence of such an efficacious alternative remedy and considering the fact that the petitioner has already availed of the same, I am of the considered opinion that the present writ petition cannot be entertained.

The writ petition is accordingly dismissed.

This order shall not preclude the rights and contentions raised by the petitioner in the application presented before the Debt Recovery Tribunal.

There shall, however, be no order as to costs.

(Partha Sarathi Chatterjee, J.)