07.07.2025.
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Ct.No.7.
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WPA 23911 of 2022

Shri Amit Kumar Chakraborty & Anr.
Vs.
The Indiabulls Housing Finance Ltd. & Ors.

Mr. Golam Mastafa,
Mr. Kazi Asif Iqbal.
...for the Petitioners.

Mr. Avishek Guha,
Ms. Shilpa Das.
...for the Respondent No.1.

1. Affidavit of service filed in Court today be kept on record.

2. By preferring the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondents not to give effect to the order dated 18th July, 2019 passed by the District Magistrate, South 24-Parganas, and not to create any third-party interest in the flat being No. C-105, Ganapati Enclave, Block-C, 1st Floor, 117A, Santosh Roy Road, P.S. Haridevpur, Barisha, Kolkata-700008.

3. Mr. Mastafa, learned Advocate representing the petitioners, submits that the petitioners availed of a house building loan to purchase the said flat. According to the petitioners, they have already repaid the EMIs as per the repayment schedule. However, on the plea that the loan has not been repaid, the Bank initiated a proceeding under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, SARFAESI Act), and ultimately, the District

Magistrate, South 24-Parganas, took possession of the flat at the instance of the Bank. He submits that the Bank may create a third-party interest in the flat in question, and accordingly, immediate intervention of this Court is required.

4. Ms. Das, learned Advocate representing respondent No. 1, vehemently opposes such prayer and submits that the writ petition is not maintainable due to the availability of an efficacious alternative remedy. She prays for dismissal of the writ petition.

5. In response to my query, Mr. Mastafa submits that the petitioners have already filed an application before the Debt Recovery Tribunal, and the said application is pending for final adjudication.

6. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

7. A Court exercising power under Article 226 of the Constitution of India cannot be oblivious to the fact that it has evolved the concept of self-imposed restrictions, and due to the existence of an efficacious alternative remedy, the Court may apply such self-imposed restrictions and refuse to entertain the writ petition. In cases involving recovery of dues by banks and financial institutions or secured creditors, the legislature has enacted a specific statute, and therefore, the statute itself provides the remedy. When a statute prescribes a remedy, the Court should exercise restraint on the ground that an efficacious alternative remedy is available. The Hon’ble Supreme Court, in a catena of decisions, has discouraged the practice

of entertaining writ petitions filed to stall recovery proceedings initiated by banks under the statute, namely, the SARFAESI Act. The SARFAESI Act itself provides a remedy to any person aggrieved by the actions taken by the bank as a secured creditor in respect of the secured asset under the provisions of the Act. A useful reference in support of this view may be made to the decision reported in (2010) 8 SCC 110 (*Union of India vs. Satyawati Tandon & Ors.*).

8. It is submitted on behalf of the petitioners that an application presented by them under the SARFAESI Act is pending consideration before the Debt Recovery Tribunal. Therefore, if the petitioners wish to present any proposal for one-time settlement of the outstanding dues, they may approach the Tribunal and file an appropriate application. Since an application is already pending and an efficacious alternative remedy is available, it would not be appropriate to pass any direction in this writ petition.

9. Accordingly, the writ petition is dismissed, however, without any order as to costs.

10. However, this order shall not preclude the petitioners from preferring any appropriate application before the appropriate forum in accordance with law.

(Partha Sarathi Chatterjee, J.)