D/L - 5
21.01.2025
Court. No. 5
S.Kundu

C.O. 4191 of 2024
With
CAN 1 of 2025

Siddhartha Mitra & Anr.
Vs.
Punjab National Bank & Anr.

Mr. Arijit Bardhan,
Mr. Biswaroop Mukherjee,
Ms. Saheli Bose

...for the petitioners.

Ms. Sampti Roy

...for the opposite parties.

1. Affidavit of service filed in Court today is taken on record.
2. This is an application *inter alia*, praying for extension of the interim order passed on 6th December, 2024.
3. It appears that the interim order was valid for a period of six weeks from the date of passing of such order and an application for extension of the interim order has been filed within the validity thereof.
4. Ms. Roy, learned advocate enters appearance on behalf of the opposite parties and raises serious objection in extending the interim order. She would submit that the order impugned is an appealable order and as such this Hon'ble Court ought not to extend the interim order.
5. Ms. Roy further submits that the Debt Recovery Appellate Tribunal, Kolkata was functional all along, though between 26th November, 2024 and 6th

December, 2024 in absence of the Chairperson of DRAT, Kolkata, additional charge was held by DRAT, Allahabad. According to her, the only consideration for which the revisional application appears to have been entertained is the non-availability of the remedy provided for under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 before the Debt Recovery Appellate Tribunal, Kolkata. Since, at present the DRAT Kolkata is functioning, the revisional application should not be permitted to be continued before this Court.

6. Having heard the learned advocates appearing for the respective parties, I find that the revisional application has been filed *inter alia*, challenging the order dated 2nd December, 2024 passed by the learned Presiding Officer, Debts Recovery Tribunal – III, Kolkata. It would appear from the order dated 6th December, 2024, the case of the petitioners has been noted in the said order. To avoid reiteration, the same is extracted hereinbelow:-

> *"This civil revisional application under Article 227 of the Constitution of India has been filed challenging the order dated 2nd December, 2024 passed by the Debts Recovery Tribunal-III, Kolkata (hereinafter referred to as 'the DRT').*
>
> *The case of the petitioners in nutshell is that the petitioners are the co-sharers in*

respect of the property in-question and petitioner no.1 has been residing in the property-in-question and petitioner no.2 is carrying on business in the same property under the name and style of "Sakti Enterprise". The ground floor of the said property is occupied by the tenants. In the month of July, 2023, the petitioners came to learn from Dr. Anirban Mitra, one of the co-sharers that one Amrapali Medical Centre & Nursing Home Private Limited of which 2 he was a Director, had availed of financial accommodation from the United Bank of India (presently known as 'Punjab National Bank') and they have mortgaged the property-in-question with the bank to secure repayment thereof. Owing to default on the part of the borrowers to repay the said financial accommodation availed of, the bank resorted to the mechanism envisaged in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') and accordingly proceeded to take over physical possession of the property-in-question. On 20th February, 2020 the District Magistrate, 24-Parganas (South) issued order for taking over physical possession of the property-in question. Accordingly, the petitioners were constrained to file a writ petition being WPA 25352 of 2024 for adequate redressal of their grievance. By order dated 7th October, 2024, the writ petition was disposed of granting liberty to the petitioners to approach the learned DRT under Section 17 of the SARFAESI Act and the issue of limitation was kept open to be decided by the *learned DRT. Pursuant thereto, on 14th November, 2024 the petitioners filed an application under Section 17 of the SARFAESI Act seeking for appropriate relief and also sought for stay of the order of the District Magistrate, 24-Parganas (South) dated 20th February, 2020. The application of the petitioners under Section 17 of the SARFAESI Act was dismissed on the ground of it being barred by limitation vide order dated 2nd December, 2024. Being aggrieved by and dissatisfied with the impugned order of learned DRT, the petitioners have preferred the present revisional application.*

Mr. Arijit Bardhan, learned Advocate appearing on behalf of the petitioners submits that the copy of the order passed by the District Magistrate, 24-Parganas (South) was only served upon the petitioners during hearing of the writ petition on 7th October, 2024 and not prior to that date. Therefore, the period of limitation of 45 days enshrined under Section 17(1) of the SARFAESI Act is to be counted from the date of knowledge. The learned DRT erred in holding that the period of 45 days mandated would commence from the date on which measure under Section 13(4) of the SARFAESI Act has been adopted and failed to appreciate that the order of District Magistrate South 24-Parganas was not served prior to 7th October, 2024. The application under Section 17 of the SARFAESI Act was filed within the period of limitation. In support of his contention, he relies on the decision in the case of ***Deecon India Pvt. Ltd. and others Vs. Canara Bank and others,*** *reported in*

2022 SCC OnLine Cal 3737. *Therefore, the order of dismissal by the learned DRT on the ground of delay in filing of the application under Section 17 of the SARFAESI Act is not sustainable in law. He also informs this Court that the bank has already taken measures for execution of the order of the District Magistrate for taking over physical possession of the property-in-question in the meantime, which is apprehended to be executed shortly. He seeks for stay of the order passed by the District Magistrate, 24-Parganas (South) dated 20th February, 2020.*

On the going through the materials on record, it is found that the petitioners challenged the impugned order of the District Magistrate in WPA 25352 of 2024, wherein following direction was passed:

> *"The fact that the property was mortgaged, is not in dispute. The petitioners are aggrieved persons. Any aggrieved person can approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The petitioners have the liberty to do so. The petitioners shall approach the tribunal in accordance with law. A copy of the order of the District Magistrate, has been handed over by the learned Advocate for the bank, to the petitioners' advocate on record.*
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> *As there is a specific averment in the writ petition that the original borrower was served with a copy of the order of the District Magistrate and the order remained unchallenged, the issue of limitation will also be decided by the Debts Recovery Tribunal. All points raised by either party, are kept open.*
>
> *The bank will not take any coercive measures as regards possession of the area allegedly occupied by the petitioners, till November 5, 2024."*

Upon liberty been given by this Hon'ble Court in aforesaid order, it is found that the application under Section 17 of the SARFAESI Act was filed by the petitioners on 14th

November, 2024 as would be apparent from the order impugned. The said application was dismissed on the ground of it being barred by limitation. The learned DRT has observed that according to Section 17(1) of the SARFAESI Act, the period of 45 days is mandated to commence from the date on which a measure under Section 13(4) of the SARFAESI Act has been adopted. It is pertinent to note that the order of the District Magistrate, 24-Parganas (South) was only served upon the petitioners at the time of hearing of the writ petition on 7th October, 2024 as recorded in the order. The impugned order also shows that the copy of the said order was not forwarded to the petitioners prior to 7th October, 2024. At this stage, it would be profitable to reproduce the relevant portion of the order passed in Deecon India Pvt. Ltd. (supra) as hereinbelow:-

> *"6. Moreover, the time period mentioned in section 17(1) of the SARFAESI Act, must be given a purposive construction. Although, the starting point is the date of the impugned measure taken by the secured creditor, the provision would be rendered arbitrary and ineffective if the date of knowledge of the 'person' [under section 17(1)] is not taken into account. If the date of knowledge is discounted, then most applications under section 17(1) would be rendered infructuous particularly where the 'person' receives the communication of the impugned action beyond the 45-day time limit. It is completely believable that the petitioners did not approach the DRT on the apprehension that the petitioners' application would be kept out and not even be given a file number on the ground of being belated."*

Bearing in mind the aforesaid observation which records that if the date of knowledge is discounted, then most applications under section 17(1) would be rendered infructuous particularly where the 'person' receives the communication of the

> *impugned action beyond the 45-day time limit, this Court finds that an arguable case has been made out by the petitioners in the present application.*
>
> *Accordingly, there shall be an order of stay of the order of the District Magistrate, 24-Parganas (South), dated 20th February, 2020 under memo dated 10th August, 2020 for a period of six weeks from date or until further orders, whichever is earlier."*

7. Considering the above and noting that at present Debt Recovery Appellate Tribunal, Kolkata is functional and considering the fact that an alternative remedy in the form of an appeal is provided under the provisions of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, however, at the same time, it cannot be lost sight of that the instant revisional application was admitted on the grounds of jurisdictional error especially having regard to the fact that the copy of the order impugned was not forwarded to the petitioners prior to 7th October, 2024, and not on the ground of non-availability of alternative remedy, I am of the view that the interim protection granted by this Court on 6th December, 2024 should be permitted to be continued for another period of six weeks from date. The petitioners are at liberty to approach the Appellate Authority and in the event an appeal is filed within the aforesaid period, the same shall be disposed on merits.

8. With the above observations and directions, the revisional application stands disposed of.
9. The connected application being CAN 1 of 2025 is disposed of accordingly.
10. There shall no order as to costs.

    All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)