

15-05.2019  
Court No.2  
Sh/skc/23.

**CIRCUIT BENCH OF  
CALCUTTA HIGH COURT  
AT JALPAIGURI  
WRIT APPELLATE JURISDICTION  
APPELLATE SIDE**

**W.P.A. 120 of 2019**

Sri Arun Mitruka. . . . .Petitioner.  
Vs.  
State Bank of India & Anr. . .Respondents.

Mr. Arun Mitruka.  
... Petitioner (In person).

The petitioner has filed affidavit showing service of the copy of the application upon the respondents.

Affidavit of service filed in Court today be taken on record.

The instant application under Article 226 of the Constitution of India has been filed by the petitioner for writ/relief in the nature of mandamus to prevent the respondents from taking any coercive action against him with other ancillary reliefs.

Mr. Arun Mitruka, petitioner, has personally moved the instant application because of stalemate condition prevailing all over the State due to cease

work observed by the learned advocates on being sponsored by the State Bar Council, West Bengal.

The grievance of the petitioner is that the petitioner runs a business under the name and style of "K. N. Traders" and for the purpose of his business the petitioner took cash credit facility from the State Bank of Bikaner & Jaipur in the year 2016 amounting to Rs.11,00,000/- ( Rupees eleven lakh only) against security of his landed property. Subsequently, in the year 2018 the petitioner suffered set back in his business. The petitioner duly intimated the matter to the respondent bank by a letter dated April 28, 2018. Thereafter on December 29, 2018 the petitioner deposited certain amount to liquidate the said cash credit facility, but the respondent bank sent a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Sarfaesi Act) and initiated action as per the said notice.

The petitioner wanted to challenge the validity of the said notice and subsequent proceeding initiated by the respondent bank before the Debt Recovery Tribunal, Siliguri by filing an application

on May 6, 2019 but the Tribunal authority refused to accept his application on the ground that without Vakalatnama the Tribunal authority could not accept the said application intended to be filed by the petitioner.

I have heard the petitioner and also gone through the application along with the annexures.

Needless to say that if a person is aggrieved against some act or measure undertaken by the respondent bank under the Sarfaesi Act, efficacious relief is available by filing an application challenging the said proceeding under the Sarfaesi Act before the Debt Recovery Tribunal. When there is statutory provision entitling the petitioner for appropriate relief, constitutional writ jurisdiction is *prima facie*, not available.

However, the Court is not unmindful to note that an unfortunate situation is prevailing in the field of administration of justice since April 24, 2019, as a result of cease work observed by the learned advocates throughout the State of West Bengal, in spite of the fact that the Hon'ble Apex Court declared cease work by the learned advocates from attending the Court proceeding illegal and unconstitutional and amounting to

causing hindrance upon the administration of justice, the fact remains, cease work is going on.

However, it is not expected from an authority dispensing justice like that of Debt Recovery Tribunal to refuse an application intended to be filed by the petitioner before the Tribunal for want of Vakalatnama to be executed by an advocate.

Though in the instant writ petition the Debt Recovery Tribunal, Siliguri or the learned Registrar thereof are not made party respondent, I am of the view that in appropriate cases this Court has jurisdiction to pass order for promotion of equity and rule of law under the provisions of Article 226 read with Article 227 of the Constitution of India.

In view of the above discussion the instant writ application is disposed of directing the Debt Recovery Tribunal, Siliguri and specially, the learned Registrar, Debt Recovery Tribunal, Siliguri to accept the application intended to be filed by the petitioner on affidavit dispensing with all technical formalities relating to filing of Vakalatnama on the basis of an undertaking to be made by the petitioner that the petitioner will file Vakalatnama after normalization of the prevailing situation by calling off the cease work.

The instant writ application is disposed of without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the petitioner expeditiously on compliance of all requisite formalities.

**(BIBEK CHAUDHURI, J.)**