

29-12-2022
Court No.07
AGM/AKG
Item No. 8

WPA 29150 of 2022

**S. K. Projection Private Limited
Vs.
Indian Bank and Ors.**

Mr. Debasish Saha,
Mr. Subhasish Saha,
Mr. Shyamal Kumar Sinha

For the Petitioner.

Mr. Santosh Kumar Roy,
Mr. Saswata Nayak,
Ms. Antalina Guha.

For Indian Bank.

The writ petition is filed, inter alia, challenging the notice dated 20th December, 2022 issued by the appropriate authority under the SARFAESI Act, 2002.

Mr. Debasish Saha, learned advocate representing the petitioner while questioning the validity of this notice dated 20th December, 2022 has submitted that the District Magistrate passed an order on 4th August, 2021 under Section 14 of the SARFAESI Act, 2002, but the affidavit was affirmed by the respondent Bank on 23rd February, 2022.

According to the petitioner, how the order was passed by the District Magistrate under the relevant provisions of the said Act of 2002 before the affidavit was affirmed on behalf of the respondent Bank.

Mr. Santosh Kumar Roy, learned advocate appearing for the respondent Bank submits that the decision of the District Magistrate dated 4th August, 2021 has been communicated to the respondent/Bank vide Memo dated 25th May, 2022 and before that said affidavit was affirmed on 23rd February, 2022. In addition thereto, it has been submitted on behalf of the respondent Bank that the order dated 4th August, 2021 of the District Magistrate was assailed by the petitioner by initiating appropriate proceedings before the Debts Recovery Tribunal and the said application was dismissed on 3rd December, 2022.

It is the contention on behalf of the respondent Bank that the issue raised in this writ petition could have been raised before the Appellate Tribunal, but the petitioner has chosen not to approach the said Appellate Tribunal.

Considering the aforesaid scenario as appears to this Court and after taking into account the submissions made on behalf of the respective parties it appears that the order of the Debt Recovery Tribunal dated 3rd December, 2022 is an appealable order before the Appellate Tribunal and petitioner shall be at liberty to approach the Appellate Tribunal by initiating appropriate proceeding.

It will be open to the petitioner to take the point of date of affirmation of affidavit on behalf of the respondent Bank in consideration of the order passed by the District Magistrate on 4th August, 2021.

With the above observations, the writ petition being WPA 29150 of 2022 stands disposed of.

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

Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties expeditiously on compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)