

Calcutta High Court

HON'BLE JUDGE(S): PRAKASH SHRIVASTAVA, CHIEF JUSTICE, RAJARSHI BHARADWAJ,
JUSTICE

Bullusiraj Saidali Mulla & Anr.

Vs. State Bank of India & Ors.

Mr. Saptangshu Basu, Sr. Adv. Mr. Srijib Chakraborty Ms. Sushmita Ghosh Mr. Parashar
Baidya Mr. D. Kar for the appellants

Mr. Pijush Kanti Ray Mr. Sourajit Mukherjee for the Bank

Ms. Sima Adhikari Ms. Kakali Naskar for the State

MAT 357 of 2023 With CAN 1 of 2023; Dated: 28.02.2023

This intra-court appeal is directed against the order of the learned Single Judge dated 23rd February, 2023 whereby WPA 23541 of 2022 has been disposed of with a direction to the police authorities respondent nos.2, 3 and 5 therein to hand over physical possession of the secured asset/the property in question to the State Bank of India by arranging sufficient police force at 2.00 p.m. on 28th February, 2023.

The record reflects that the respondent no.1 herein had filed WPO 2635 of 2022 with the plea that the appellant was the borrower and who had committed default in repayment therefore the proceedings under the SARFAESI Act were initiated and an application was made on 16th July, 2014 for taking possession of the secured asset by the bank under Section 14 of the Act. The District Magistrate, South 24 parganas had passed the order dated 10th March, 2017 under Section 14 of the Act. The plea was taken that though the bank had approached the police authorities repeatedly seeking police assistance to take the possession but with no successful result. Hence, a prayer was made in the writ petition to direct the concerned police authorities for compliance of Section 14 orders on priority basis. The said prayer has been allowed by the learned Single Judge.

Submission of learned counsel for the appellant/borrower is that in terms of the proviso to Section 14 of the SARFAESI Act a Magistrate is required to pass order within the period of 60 days and the said order was not passed within that period and there

was a delay in passing the order. Therefore, it cannot be enforced and that before the learned Single Judge adequate opportunity was not given to the appellants.

Opposing the prayer, learned counsel for the respondent bank has submitted that though a sum of 2,63,669/- was deposited by the bank as police cost on 9th October, 2018 but no action was taken and that before the learned Single Judge the appellant was given sufficient opportunity.

Having heard the learned counsel for the parties and on perusal of the record it is noticed that undisputedly the appellant had committed default in payment of the dues and that the order was passed by the District Magistrate under Section 14 of the Act on 10th March, 2017. Learned Single Judge has considered in detail the issue of delay which was raised by the appellant.

It is worth noting that before the learned Single Judge appellant had sufficient opportunity to contest the matter. The record reflects that the writ petition was taken up by the learned Single Judge in the presence of learned counsel for the appellant on 28th November, 2022 and the issue involved in the writ petition was taken note of. Therefore, the contention of learned counsel for the appellant that the appellant was not aware of the order passed under Section 14 of the Act cannot be accepted.

Thereafter, the matter was taken up by the learned Single Judge on 30th January, 2023, 20th February, 2023 and 23rd February, 2023 when the final order was passed but during this period the appellant had not taken any steps to challenge the order under Section 14 of the Act before any forum. Therefore, at this stage it is not open to the appellant to contend that the order passed under Section 14 suffers from any legal infirmity.

Under such circumstances of the case, we find that the learned Single Judge has not committed any error in passing the impugned order.

Therefore, no case for interference in this appeal is made out.

The appeal is accordingly dismissed.

Connected application is also dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)