

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 18157 of 2022

M/s. Deecon India Pvt. Ltd. & Ors.

vs.

Canara Bank & Ors.

For the petitioners : Mr. Sakya Sen, Adv.
Mr. Arindam Banerjee, Adv.
Mr. Lalratan Mandal, Adv.

For the respondent no. 1 : Mr. Nimish Mishra, Adv.
Ms. Sangeetha Ghosh, Adv.
Ms. Aditi Roy, Adv.

For the respondent nos. 2 to 4 : Mr. Debyeet Mukherjee, Adv.
Mr. Shashwat Nayak, Adv.

Last Heard on : 23.11.2022.

Delivered on : 24.11.2022.

Moushumi Bhattacharya, J.

1. The petitioners seek quashing of a certificate of sale dated 2nd August, 2021 and a restraint on the respondent Bank from acting in terms of the said

sale certificate. The petitioner no. 1 is the borrower and the respondent Bank is the secured creditor.

2 The respondent Canara Bank, represented through learned counsel, takes a 2-point objection to the relief sought for. Counsel submits that under section 13(8) of the SARFAESI Act, 2002, a borrower can take action against sale of a secured asset only till the date of publication of notice for the auction or tender inviting quotations from the public. Counsel relies on the amendment brought to section 13(8) in 2016. The second objection is with regard to the statutory time period mentioned under section 17(1) of the Act wherein the person making the application must file the same before the Debts Recovery Tribunal (DRT) having jurisdiction in the matter within 45 days from the date on which the measures under section 13(4) are taken by the secured creditor. Counsel refers to *Akshat Commercial Pvt. Ltd. v. Kalpana Chakraborty*, AIR 2010 Calcutta 138 in support of the second objection to submit that section 5 of the Limitation Act will have no application filed under section 17(1) of the SARFAESI Act.

3. Learned counsel appearing for the petitioners relies on paragraph 18 of the writ petition which states that the petitioner received a copy of the impugned certificate of sale for the first time on or about 1st August, 2022. Counsel relies on a Supreme Court decision in *Authorized Officer, Indian Overseas Bank v. M/s. Ashok Saw Mill*; (2009) 8 SCC 366 in answer to the section 13(8) argument of the respondent Bank.

4. The Supreme Court in *Ashok Saw Mill* construed the legislative intention behind the SARFAESI Act to hold that safeguards have been

provided in the Act for rectifying any wrongful use of powers by the Banks and financial institutions by vesting the DRT with authority for declaring any such action to be invalid. The Supreme Court opined that the DRT was authorised to even restore possession to the borrower even after possession is made over to the transferee and that the DRT is entitled to even set aside the transaction including sale and to restore possession to the borrower in appropriate cases. The Supreme Court decision answers the objection taken by the Bank on the limited power of a borrower to challenge a sale after publication of the auction notice.

5. Although, a Division Bench of this Court in *Akshat Commercial* was of the view that section 5 of the Limitation Act will not apply to original proceedings in the nature of the jurisdiction of the DRT under section 17 of the SARFAESI Act, the facts in the present case, as stated on record, show that the petitioners became aware of the certificate of sale only on 1st August, 2022. The writ petition was filed on 5th August, 2022. By the order dated 9th November, 2022, the Bank was given an opportunity to rebut the statement made in the writ petition by way of documents in the form of an affidavit. The Bank has not brought anything on record to dislodge the factual contentions of the petitioners with regard to knowledge. Hence, the statement made in paragraph 18 of the writ petition with regard to the petitioners' knowledge on and from 1st August, 2022 remains uncontroverted.

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.

7. The other contentions of the Bank with regard to the latches on the part of the petitioners become irrelevant since the Bank has not been able to factually dispute the date of knowledge stated in the writ petition.

8. In view of the above reasons, this Court deems it fit to send the parties to the statutory forum under the SARFAESI Act, 2002 and seek appropriate redress. The petitioners shall be at liberty of approaching the DRT not later than seven days from 28th November, 2022. WPA 18157 of 2022 is disposed of in terms of the above.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)