

2023 SCC OnLine Guj 2552

In the High Court of Gujarat at Ahmedabad
(BEFORE NIKHIL S. KARIEL, J.)

Biren Chandrakant Shah through LHS Dimple Biren
Shah

Versus

Authorised Officer, Punjab National Bank

R/Special Civil Application No. 14199 of 2023

Decided on August 11, 2023

Advocates who appeared in this case:

Priyank S Dave(9465) for the Petitioner(s) No. 1

Shivam D Parikh(9477) for the Petitioner(s) No. 1 for the
Respondent(s) No. 1, 2

The Order of the Court was delivered by

NIKHIL S. KARIEL, J.:— Heard learned advocate Mr. Shivam Parikh on behalf of petitioner and learned advocate Mr. V.N. Sevak on behalf of respondent no. 1. Learned advocate Mr. V.N. Sevak is permitted to file his vakalatnama on behalf of the respondent no. 1.

2. By way of the present petition, the petitioner has challenged the order passed by the DRT-II, Ahmedabad dated 10.08.2023, more particularly, whereby the application preferred by the present petitioner for preponement has been rejected.

3. Learned advocate Mr. Parikh would submit that while various other prayers including for merits, the same are not agitated herein, more particularly, in view of the fact that the issue pending for consideration before the DRT in Securitization Application No. 546 of 2023.

4. Learned advocate Mr. Parikh would submit that the present petitioner had preferred Securitization Application No. 546 of 2023 on 29.07.2023 and whereas, the petitioner had challenged the Section-13 (2) notice and other subsequent measures under the SARFEASI Act in the said Securitization Application. Learned advocate would submit that the said application has come up for hearing before the learned Tribunal on 04.08.2023 and whereas, the matter is listed for hearing on 17.08.2023. Learned advocate would submit that while originally, the Court Commissioner appointed by the Chief Judicial Magistrate to assist taking over the possession of the property under Section-14 of the SARFEASI Act had issued notice to the petitioner intimating that the possession would be taken over on 06.08.2023 and whereas, it would appear that since the police protection could not be obtained, the Court

Commissioner did not proceed further in attempting to take over the possession of the property. Learned advocate would submit that subsequently, the petitioner had been issued with the notice dated 07.08.2023 intimating about the attempt on the part of the Court Commissioner to take over the possession of the property on the 12.08.2023 and whereas, in this regard, the petitioner had preferred an Interim Application No. 2504 of 2023 before the learned Tribunal seeking pre-ponement of the Securitization Application and whereas, the said pre-ponement had been rejected vide order dated 10.08.2023 prompting the petitioner to prefer the present petition.

5. As against the same, learned advocate Mr. Sevak would submit that since the Court Commissioner has issued adequate notice, therefore, no fault can be found either with the respondent - bank or the court commissioner.

6. Considering the submissions made by the learned advocates, and perusing the orders dated 04.08.2023 as well as the impugned order dated 10.08.2023, it appears that the Tribunal was concerned with the act on the part of the petitioner - original applicant of moving the learned Tribunal at the last moment and whereas, it would appear that the said aspect, which had weighed predominantly with the learned Tribunal of not pre-poning hearing of Securitization Application. The other consideration was the position of law that the learned Tribunal concerned is empowered under Section-17(3) of the SARFEASI Act to secure the assets in case the petitioner succeeds in final hearing of the Securitization Application. In the considered opinion of this Court, the consideration as regards delay which weighed with the learned Tribunal may not be corrected and may not be germane as regards the issue in question. In so-far as the Securitization Application is concerned, it would appear that the respondent had issued section 13(2) notice on 04.08.2023, thereafter, the respondent had issued notice for taking symbolic possession on the 13.02.2023 and whereas, the respondent - bank had approached the Chief Judicial Magistrate by preferring an application under Section-14 on 28.06.2023 and whereas, the Chief Judicial Magistrate, Vadodara has passed order thereupon granting the same on 14.07.2023. It would appear that thereafter, a notice had been issued by the Chief Judicial Magistrate to the petitioner indicating that the possession would be taking over on 06.08.2023 and whereas, it is only upon such notice being issued on 20.07.2023 that the petitioner had approached the learned DRT. In the considered opinion of this Court, it is also pertinent to mention that since the attempt to take over the possession on the 06.08.2023 had failed, thereafter, the Court Commissioner had issued fresh notice on the 07.08.2023 intimating to the petitioner that the possession would be taken over on the 12.08.2023 prompting the petitioner to prefer preponement

application. Prima-facie to this Court while it would appear that the petitioner could have challenged the action on the part of the respondent - bank not taking symbolic possession, more particularly, by issuing symbolic possession notice dated 13.02.2023, yet the fact of the petitioner having challenged the notice for taking physical possession of the property on 06.08.2023, could not be stated to be a belated action. In any case, this Court is of the prima-facie opinion that when an application for granting of interim relief, more particularly, in the nature of trying to interject the proceedings of the bank for taking over the possession of the property of borrower, more particularly, when the properties are residential properties, then the Tribunal as a quasi judicial forum ought to have exercised its discretion one way or the other and ought to have granted or refused to grant interim relief, more particularly, by giving reasons for refusal of the same. Not considering an application, by stating that the application is preferred belatedly, may not in the prima-facie opinion of this Court be a proper course of action that is expected from a judicial forum, more particularly, when such grant or refusal to grant interim relief would have bearing on the property of the borrower. Be that as it may, since the learned DRT is a quasi judicial forum, this Court refrains from making any further observation on the said aspect expecting that all the concerned would ponder over the prima-facie observation of this Court as above.

7. In view of the prima-facie observation as above, more particularly, since the main matter is slated to be listed on the 17.08.2023, purely by way of interim measures, the respondent no. 1 is directed to ensure that the possession of the property is not taken over till the said date and whereas, on the said date, the learned Tribunal shall hear the application for grant or refusal of interim relief as the case may be.

8. With this limited observation and direction, present application stands disposed of. It is clarified that this Court has not gone into merits of the matter.

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