

S/L 6
08.04.2021
Court. No. 19
GB

C.O. 923 of 2021

Suman Bhattacharyya & Anr.
Vs.
Indian Bank & Ors.

(Through Video Conference)

Mr. Joy Saha
Ms. Jayshree Saha,
Mr. Saket Cahudhury,
Mr. N. Mishra,
...for the Petitioners.

Mr. Om Narayan Rai.
...for the Opposite Party No.1.

Mr. D. Karmakar,
Mr. S. Saha.
...for the Opposite Party Nos.3 to 6.

This revisional application arises out of an order dated March 26, 2021 passed by the learned Debts Recovery Tribunal –III, Kolkata in S.A. No. 539 of 2018.

By the order impugned, the learned Tribunal dismissed the S.A. and accordingly disposed of all the interlocutory applications filed by the respective parties.

This revisional application challenges the procedure adopted by the learned Tribunal while dismissing the S.A. The attention of the Court is drawn to the order dated February 19, 2021, by which the learned Tribunal fixed the matter for hearing on February 26, 2021 and extended the interim order till the next date of hearing. The matter was not taken up for hearing as per the records on February 26,

2021, but the matter was next listed before the learned Tribunal on March 17, 2021. The learned Tribunal fixed the matter along with the interlocutory applications within the first ten matters on April 6, 2021, April 7, 2021 and April 8, 2021 between 12.30 p.m. to 1.30 p.m. as a 'Specially Fixed Matter'. It appears that the matter was placed on March 26, 2021 in the list for judgment, when the parties were present and the petitioners objected to the proceedings being continued on that date. The learned Tribunal pronounced its judgment thereby dismissing S.A. 539 of 2018 and disposed of the connected applications.

This procedural irregularity which not only amounts to violation of the principles of natural justice but also to an attempt a part of the Tribunal to preclude the petitioners from availing of the remedies under the law and effectively contest the said proceedings. This conduct of the learned Tribunal also amounts to procedural impropriety. Thus, although the order impugned is a final order, which is an appealable order, the revisional application is being entertained as this Court under the general power of superintendence has the jurisdiction to correct such irregularity and prevent any miscarriage or travesty of justice.

The facts as narrated hereinabove, clearly show that the Tribunal did not proceed in accordance with law and has caused grave injustice to the petitioners by pronouncing the judgment on a day, not fixed by the Tribunal itself for

hearing. The Tribunal had fixed three consecutive dates for hearing of the matter by an order dated March 17, 2021. Instead, on a prior date, the judgment was pronounced when admittedly no hearing was held.

In view of the fact that the application before the learned Tribunal was dismissed without granting any opportunity to the petitioners to argue their cases, the decisions of the Hon'ble Apex Court in the matter of ***United Bank of India Vs. Satyawati Tondon & Ors.*** reported in ***(2010) 8 Supreme Court Cases 110*** and in the matter of ***Kaniyalal Lalchand Sachdev Vs. State of Maharashtra & Ors.*** reported in ***(2011) 2 Supreme Court of India 782*** will not be applicable. In this case, existence of an alternative remedy by way of an appeal would not be a bar as the learned Tribunal proceeded in a manner, which is not only irregular and beyond all principles of judicial discipline and decorum.

The records do not reveal that the order dated March 17, 2021 was either recalled or modified by the learned Tribunal.

Under such circumstances, the order impugned does not have any legs to stand. The order impugned is set aside and quashed. The parties are relegated to the learned Tribunal for hearing of S.A. 539 of 2018 along with all pending interlocutory application. The learned court below is directed to hear out the applications and the S.A.

preferably within two months from the date of communication of this order.

It is made clear that the parties will not be allowed any unnecessary adjournments. The learned Tribunal shall proceed in accordance with law upon giving adequate opportunity to the parties to place their case.

This Court has not gone into the merits of the claim of the petitioners and the learned Tribunal shall decide the matter independently and in accordance with law.

The revisional application is disposed of.

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

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)