

25.01.2021
Court No. 19
Item No.2
CP

C.O. 1177 of 2020
with
CAN 1 of 2020

Bank of India & anr.
vs.
Samaresh Dhar

(via video conference)

Mr. Abhishek Banjeree
Ms. Parna Roy Choudhury
Ms. Anindita Das

.....for the petitioners.

Mr. Dipankar Dhar
Mr. Rudra Dhar

....for the opposite party.

This revisional application has been filed by the bank, challenging an order dated March 13, 2020 passed by the learned Debt Recovery Appellate Tribunal at Kolkata. According to the Bank Rs.3.75 crores are due and payable by the borrower.

The opposite party is the guarantor in the proceeding. The guarantor/opposite party preferred the appeal before the learned appellate tribunal (Diary No. 238 of 2020). By the order dated March 13, 2020 the learned appellate tribunal stayed the further proceedings of the e-auction notified by the authorized officer of the bank with respect to the property covered by an application being I.A. No. 184 of 2020, filed by the opposite party pending before

the DRT-1, Kolkata, filed in connection with S.A. No. 323 of 2019.

The bank has moved this revisional application on the ground that an ex parte interim order was passed and a stay has been imposed on the e-auction through which, the bank wanted to sell the property in order to recover the amount due and payable. It is the contention of the bank that the guarantor is liable to pay the amount.

Mr. Dhar, learned advocate appearing on behalf of the opposite party/guarantor submits that the property sought to be sold was an unsecured asset over which the bank did not have any lien; that the e-auction could not be held during the pendency of IA No. 184 of 2020; that all attempts were made to serve the bank with a copy of the Memo of Appeal filed before the learned appellate tribunal but the same could not be done.

Admittedly, on March 13, 2020 an interim order was passed by the learned appellate tribunal, ex parte, restraining the bank from proceeding with the e-auction. Although the learned appellate tribunal considered the affidavit of service yet, I do not find any observation that the learned appellate tribunal was satisfied with regard to the service.

Under such circumstances, there is no use in keeping the revisional application pending before this court. The revisional application has been filed

against an interim order while the main appeal is pending. The short point which was considered by the learned appellate tribunal while passing an order of stay was whether I.A. 184 of 2020 should be disposed of prior to any decision of the bank to sell the property.

This revisional application is disposed of with a direction upon the Debts Recovery Appellate Tribunal at Kolkata to dispose of the I.A. 141 of 2020 along with the appeal within 10 days from the communication of this order. This court has not considered the merits of the claims and counter claims of the parties. This court is of the view that a matter of this nature requires urgent consideration and disposal in view of the continuance of an ex parte order of stay of the e-auction.

The revisional application is disposed of. There shall be no order as to costs. The learned appellate tribunal will proceed independently and on merits, without being influenced by this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)