24.11.2021
Sl. No.2
srm

W.P.A. No. 10184 of 2021
(CAN 1 of 2021)
Kalidas Chakraborty
Vs.
State of West Bengal & Ors.

Mr. D.K. Sengupta,
Mrs. Jaya Datta,
Ms. Sweta Saha
…for the Petitioner.

Mr. Pradip Kumar Roy,
Mr. Joydeep Roy
…for the State-respondents.

Mr. Ankit Surekha
…for the Bank.

The petitioner has challenged the notice dated November 5, 2021 issued under Section 122 of the West Bengal Co-operative Societies Act, 2006 as also the sale notice dated November 9, 2021 issued by the Baidyabati Sheoraphuli Co-operative Bank Limited.

The petitioner submits that the bank should not proceed with the sale pursuant to the proceedings initiated against the petitioner on account of unpaid loan. It is further submitted that the bank is proceeding with the sale keeping the reserve price of Rs.8,21,000/- which is much less than the loan amount claimed by the bank. It is further submitted by the petitioner that the amount equivalent to the reserve price was offered by the petitioner but the same was not accepted by the bank when negotiations for one time settlement were going on. The petitioner submits that if the bank assessed the fair market value of the property as Rs.10,26,000/-, there cannot be any reason as to why the bank shall not negotiate with the petitioner and accept the amount offered by the petitioner which is at par with the reserve price.

Such argument of the petitioner is not accepted by this Court, inasmuch as, admittedly the principal amount due is Rs.13,26,361/- and the interest amount due is Rs.2,73,722/- as on October 31, 2020. The petitioner has not been able to show any irregularity in the proceedings initiated by the bank under the provisions of the said Act. The only contention of the petitioner is that the bank should accept the amounts which the petitioner can pay under the financial constraints that the petitioner has been suffering and consequently stop the sale.

Having considered the rival contentions of the parties, this Court is of the opinion that the entire principal amount should be paid to the bank by the petitioner in five equal monthly instalments. First of such instalment shall be paid within December 10, 2021. Remaining of the four instalments shall be paid within January 28, 2022, February 28, 2022, March 28, 2022 and April 28, 2022. Fraction, if any, will be added with the last instalment.

There shall be unconditional stay of the sale notice dated November 9, 2021 up to December 10, 2021. If the first instalment is not paid within December 10, 2021, the bank will proceed with the sale. In case of default in payment of any of the instalments, as directed hereinabove, the bank may proceed with the sale.

The Court has taken cognizance of the fact that the property of the petitioner which is sought to be sold cannot fetch the amount which is still outstanding. Thus, in order to save the property this order is being passed as the petitioner has expressed his *bona fide* in wanting to repay the entire principal amount in instalments. The provision of one time settlement is not unknown to the business of repayment of loan but the same is practised regularly in such loan transactions and banking business. This Court is of the opinion that the interest component should be negotiated as a one time settlement and the bank shall make sincere efforts to see how the imposition of the same can be minimised and the business of the petitioner can be saved.

The petitioner is present in Court and has expressed his *bona fide* and intention to repay by way of instalments. The undertaking of the petitioner is recorded herein above in the form of this order and the gesture of the petitioner and his learned Advocates is appreciated.

This writ petition is, thus, disposed of.

In view of the disposal of the writ petition, the connected application has become infructuous and the same is disposed of accordingly.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)