10.06.2021
Item No. 8
Crt.No.11
b.r.

MAT 543 of 2021
IA No. CAN 1 of 2021

Jagai Majhi @ Jagannath Majhi
-vs -
The State of West Bengal & Ors.

(Via Video Conference)

Mr. Dipankar Pal
Mr. Juin Dutta Chakraborty
.... For the appellant.

Mr. Pradip Kumar Roy
Ms. Shraboni Sarkar
...... for the State.

Mr. Surajit Auddy
Ms. Golapi Chhari
...... for the Respondents/Bank.

Under challenge in this appeal is the order impugned of the Hon'ble Single Bench dated 20th April, 2021 in the writ petition being WPA 5638 of 2021. The appellant before this Court was the petitioner before the Hon'ble First Bench. The operative part of the order of the Hon'ble First Bench reads as follows:-

> *" In the facts and circumstances as aforesaid, the petitioner is not entitled to any further protection.*
>
> *The respondents shall be free to proceed with the sale of the petitioner's property as indicated in the notice dated 28th January, 2021 in modification and/or variation of the order dated 7th April, 2021 wherein the sale of the petitioner's property as indicated in the notice dated 28th January, 2021 was directed to be kept in abeyance till 23rd April, 2021.*
>
> *The writ petition is, therefor, dismissed, however, without any order as to costs.*
>
> *The respondents shall take into account the payment of Rs,1,00,000/- made by the petitioner*

> *on 25th March, 2021 while appropriating the sale proceeds that may be realised from the sale of the petitioner's property.*
>
> *Nothing further remains to be adjudicated in this writ petition."*

Mr. Pal, learned Counsel appearing for the appellant, submits that the appellant as the Borrower of the Respondent No.2, the Co-operative Bank (for short referred to only as the Bank) is entitled to a just consideration as provided by the West Bengal Co-operative Society Rules, 2011 (for short the 2011 Rules) and particularly Rules 191B, 191C and 191D thereof.

It is the specific stand of the appellant/the Borrower/the writ petitioner that the Respondents/Bank did not grant the appellant the opportunity of a consideration of an objection to the claimed loan amount under Rule 191C of the 2011 Rules. It is the further stand of the appellant that inspite of specific pleadings in the writ petition to the above effect that the statutory formalities enjoined by Rules 191B, 191C and 191D *(supra)* have not been followed by Respondents/the Bank, such has not been given due regard by the Hon'ble First Bench.

It is argued that the order of the Hon'ble Single Bench dated 22nd March, 2021 has failed to appreciate the true intent and scope of Rules 191B, 191C and 191D *(supra)* and the appellant was only required to prove his *bona fides* by depositing a sum of Rs.1,00,000/- within a prescribed period as a pre-condition to obtaining a complete stay of the Sale Notice as issued by the Bank on the 28th of January, 2021. It is submitted that the order of the Hon'ble Single Bench dated 22nd March, 2021 although complied with by the appellant, the Hon'ble Single Bench came to an ultimate finding which is contrary to the legal procedure mandated by the 2011 Rules.

Therefore, Mr. Pal submits, in the event the Auction Sale of the mortgaged property is allowed to proceed without compliance with the 2011 Rules *(supra),* the appellant shall suffer irreversible prejudice.

Mr. Auddy, learned Advocate, appears for the Respondents/Bank and submits that with the retirement of the erstwhile Sale Officer of the Bank, steps were initiated afresh by the new Sale Officer. However, it could not be clarified before this Court at the hearing today that the Notice dated 28th January, 2021 and referred to before the Hon'ble First Bench in its previous order dated 22nd March, 2021, was a culminating point of the mandate conferred by Rules 191B, 191C and 191D *(supra).*

The State is represented by Mr. Pradip Kumar Roy, learned Counsel with Ms. Shraboni Sarkar, learned Advocate.

In the backdrop of the above discussion, this Court is not satisfied that the procedure under the 2011 Rules was followed. Since the parties are contesting an outstanding loan from the Bank, they are directed to complete the formalities *qua* 191B, 191C and 191D of the 2011 Rules afresh and, not later than a period of three months from the date of this order.

For the above reasons, the order impugned of the Hon'ble First Bench dated 20th April, 2021 stands set aside.

It is also made clear that in the absence of any step taken by the Borrower to act in terms of this order the Bank shall be free to proceed to realise the loan.

MAT 543 of 2021 along with **CAN 1 of 2021** stand thus **disposed of.**

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Kausik Chanda, J.) **(Subrata Talukdar, J.)**