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30.07.2021
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In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

C.O. No. 1332 of 2021
(Via video conference)

M/s. R.D. Developers Pvt. Ltd.
-Vs.-
Amit Kumar Dutta & Anr.

Mr. Ranjan Deb,
Mr. Rishad Medora,
Mr. Meghajit Mukherjee,
Mr. Vikas Tewari
...for the petitioner

Mr. Purnasish Gupta,
Ms. Vaswati Banerjee,
Mr. Soumya Ray
...for the opposite party no. 1

Affidavit-of-service filed in Court today be kept on record.

The petitioner has, in the present revision, challenged an order of ad interim injunction passed by the appellate court.

It is submitted by learned senior counsel appearing for the petitioner that the appellate court acted patently without jurisdiction in granting injunction in view of the specific bar stipulated in Section 34 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, read with Section 17 of the said Act.

Learned senior counsel further contends that the plaint of the opposite party no. 1 clearly indicates that steps were taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by the bank. Since Section 17 of the said Act deals specifically with the remedy available to any person aggrieved with such steps, the bar of Section 34 thereof squarely applies, it is argued.

Learned counsel appearing for the opposite party no. 1, who is the principal opposite party, contends that the bar of Section 34 does not apply in the present case, in view of the opposite party no. 1 not having any effective remedy under Section 17 of the 2002 Act and since the reliefs in the suit have been claimed against the defendant no. 1, that is, the proforma opposite party no. 2 herein.

Learned counsel, by placing reliance on the language of Section 17 of the 2002 Act, argues that the said provision does not cover the subject-matter of the present suit, since the opposite party no. 1 has not claimed any direct relief against the bank and/or regarding any steps taken by the bank, as envisaged under Section 17 of the 2002 Act.

Learned counsel further contends that the application under Article 227 of the Constitution of India has been preferred extremely late, for which the same should be turned down.

Upon hearing learned counsel for both parties, it is seen that sufficient explanation for the delay in filing the present revisional application has been furnished in paragraphs 24 and 25 of the same. Since Article 227 of the Constitution of India is a Constitutional remedy, there is no absolute bar under the Limitation Act, which is a subordinate legislation vis-à-vis the Constitution. However, it is settled law that the limitation for filing revisional applications is to be considered while entertaining an application under Article 227 of the Constitution of India since, as per the procedure of this Court, such applications are treated as 'civil revisional applications'.

Even going by the said parameters, being satisfied with the explanation furnished in the aforesaid paragraphs of the revisional application, I observe that the delay in fling the said revisional application has been sufficiently explained.

As far as the merits of the case are concerned, it is palpably clear, particularly from paragraphs 6 to 8 of the plaint and the injunction application as well as relief (b) claimed in the plaint, that the injunction granted was squarely contrary to Section 34, read with section 17, of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

By seeking resort to clever drafting, the plaintiff has couched the plaint in such a language so as to defeat the legal provisions mentioned above. Although it has been specifically admitted by the plaintiff/opposite party no. 1 in its pleadings that the pro forma defendant/pro forma opposite party no. 2 has taken steps, including “possession” in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with regard to the suit premises, it does not lie in the mouth of the opposite party no. 1 to say that the suit has been filed primarily against the principal defendant. In the present case, the relief actually sought was directly against the bank, which has admittedly taken possession. Although it has been sought to be contended by the plaintiff/opposite party no. 1 that physical possession has not been taken by the bank as yet, such distinction is not apparent from the pleadings in the application, where the expression "possession" is not qualified by any such term as "symbolic" or its equivalent.

Under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, it is well settled that 'any person' being aggrieved with the steps taken by the bank has to approach the Debts Recovery Tribunal. In Section 17, read with Section 34, of the 2002 Act, there is a specific bar to the jurisdiction of civil courts to grant reliefs which can be granted in such a proceeding by the tribunal.

In the present case, in view of the admission in the plaint that the bank has taken possession as well as other steps under the 2002 Act, the rigours of Section 34 of the 2002 Act clearly apply and the appellate court acted patently without jurisdiction in assuming the jurisdiction of the tribunal and granting the injunction by overlooking the bar of Section 34 of the 2002 Act.

In such view of the matter, the impugned order cannot stand a moment's judicial scrutiny and ought to be set aside.

Accordingly, C.O. NO. 1332 of 2021 is allowed, thereby setting aside order no. 2, dated July 10, 2018 passed by the District Judge, Alipore, District-South 24-Parganas, in Miscellaneous Appeal No. 154 of 2018. The bank will be at liberty to take possession of the suit property in view of the reversal of such impugned order, in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)