S/L 54
25.11.2021
Court. No. 19
GB

W.P.A. 18549 of 2021

M/s. Mukti Oil Mills Private Limited & Ors.
VS
The State of West Bengal & Ors.

Mr. Ranjan Kali,
Ms. Mitul Chakraborty,
Ms. Anindita Maity.
... for the Petitioners.

Mr. Ankit Sureka.
... for the Bank.

Mr. Srijan Nayak,
Ms. Rituparna Maitra.
... for the State.

The petitioners filed the writ petition challenging a sale notice dated November 9, 2021.

The writ petition was filed on November 22, 2021 that is, three days prior to the date when the sale was fixed. The matter was mentioned at 2.00 p.m. for being taken up out of turn.

Mr. Sureka, learned advocate for the Cooperative Bank submits that the sale has been completed and a provisional certificate of acceptance of bid has been issued in respect of the highest bidder, Sri Ajay Shaw. The sale has been confirmed in the name of Ajay Shaw for an amount of Rs.82,50,000/- (Eighty two lakhs fifty thousand only). It is further submitted by Mr. Sureka that the law provides a provision of review and the petitioner also has a right under the law to pray for setting aside of the sale. It is also on record that with regard to the loan account being T/135, proceedings under the SARFAESI Act is going on before the learned Debts Recovery Tribunal-I, Kolkata.

Mr. Kali, learned advocate appearing on behalf of the petitioners submits that an order was passed by the learned Debts Recovery Tribunal-I, Kolkata against the said loan account. Rupees 17 lakhs has also been deposited by the petitioners. According to him, despite having received the said amount, the bank proceeded with the sale without referring the matter to the Tribunal. He further submits that three loan accounts have been clubbed together in one sale notice, which is not permissible under the law.

Mr. Sureka, submits that the petitioners can approach the appropriate authority for setting aside the sale as per the provisions of Rule 191-I of the West Bengal Co-operative Societies Rules 2011 (hereinafter referred to as the said Rules). That clear 16 days notice had been given from the date of issuance of the proclamation. The proclamation was issued on November 9, 2021 and the sale was fixed on November 25, 2021. He further submits that the petitioners may also approach the learned Debts Recovery Tribunal-I, Kolkata, if the petitioners are aggrieved by any action taken by the bank, contrary to the orders of the learned Debts Recovery Tribunal-I, Kolkata. Lastly, he submits that the petitioners had given a letter of lien and set-off permitting the bank to club together all the loan accounts and treat the same as a single transaction, vis a vis, the 15 crores which are due and payable by the petitioners.

Mr. Sureka further submits that the law does not debar the Co-operative society from proceeding under Section 122 of the West Bengal Co-operative Societies Act, 2006 even if, there are proceedings before the learned Debts Recovery Tribunal-I, Kolkata. The Co-operative society can act and proceed in accordance with law. Moreover, he further submits that as per the direction of the learned Debts Recovery Tribunal-I, Kolkata the petitioners were supposed to negotiate with the bank and enter into one time settlement but the said settlement did not come true. The petitioner prays for an one time settlement.

Reliance has also been placed on a decision of M/s. Mukti Oil Mills Private Limited & Ors. versus The State of West Bengal & Ors. (in re: MAT 1017 of 2021). The same petitioners moved another writ petition challenging a sale notice in respect of another loan which is a part of the consortium of loan taken by the petitioners.

This Court had given an unconditional stay of the sale provided the petitioners paid certain amounts. The said amount was not paid and the writ petition was dismissed. The petitioners challenged the order of this Court in an appeal before the Division Bench. The Division Bench dismissed the appeal, inter alia, holding that in view of the petitioners not having exercised their bona fide as per the direction of the Court, no favourable order can be passed in favour of the petitioners with regard to the said property in question.

Having heard the rival contentions of the parties, as the sale has been confirmed in favour of the proposed buyer at a sum of Rs.82.5 lakhs, and third party rights have been created no orders staying the sale as prayed for, can be passed. The petitioners have not been able to show any blatant illegality, irregularity or violation of the principles of natural justice in the entire procedure under challenge. The bar of existence of an alternative remedy under the law will operate in this case. The proceeding before the learned Debts Recovery Tribunal-I, Kolkata also becomes an embargo for the petitioners to move this Court under Article 226 of the Constitution of India with regard to the self-same loan account.

The petitioners have thirty days time from date as per Rule 191-I of the said rules to move the appropriate authority for cancellation and setting aside of the sale. The petitioners are at liberty to do so. Such sale cannot be given final effect before thirty days from date as per Rule 191-J. Thus, the petitioners have sufficient time to approach the authority.

Moreover, the petitioners have alleged that a proceeding before the learned Debts Recovery Tribunal-I, Kolkata is pending and has not been concluded. It has further been alleged that the order of the learned Debts Recovery Tribunal-I, Kolkata has been violated by the bank.

Thus, the petitioners are at liberty to approach the learned Debts Recovery Tribunal-I, Kolkata immediately.

This Court finds no reason to interfere in this writ petition and there are alternative avenues available to the petitioners under the law for redressal of their grievances.

The petitioners have been sufficiently protected by the provisions of Rule 191-J and have enough time to approach the authorities as per law.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)