OD - 3

ORDER SHEET

WPO/1060/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

R D DEVELOPERS PVT. LTD. AND ANR.
VS.
INDIAN OVERSEAS BANK AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 15th November, 2021

[Via video conference]

Appearance:
Mr. Rishad Medora, Adv.
Mr. Meghajit Mukherjee, Adv.
… for the petitioners

Mr. Ramesh Chandra Prusti, Adv.
Mr. Sanjib Das, Adv.
Mr. B. Upadhyay, Adv.
… for the respondent nos. 1 & 2

Mr. Purnasish Gupta, Adv.
Mr. Soumya Ray, Adv.
Mrs. Vaswati Banerjee, Adv.
… .for the respondent no.3

Ms. Urmila Chakraborty, Adv.
Ms. Shivangi Thard, Adv.
… for the respondent nos. 4 & 5

The Court: The grievance of the petitioners, being the owners of the property in dispute, is that the respondent/bank is not taking appropriate care of the property in question as an owner of ordinary prudence should under the circumstances take.

It is contended that the bank is not taking appropriate action against the tenant (respondent no.3) for recovery of the amounts due from the tenant and/or otherwise ensuring that the respondent no.3 complies with its duties under the law.

Learned counsel appearing for the respondent no.5 contends that, at the present juncture, till the entire amount as stipulated in Clause 4.2.2 in the corporate resolution plan (at page 192, volume 2 of the writ petition) is disbursed, the respondent no. 5 cannot take any action in the above regard.

As such, the property is in a peculiar position right now, since the petitioners still remain its owners and the respondent no. 5 cannot take any action against the respondent no.3, as Clause 4.2.3, which assigns such rights to the resolution applicant i.e. respondent no.5, has not yet come into operation.

Learned counsel appearing for the respondent/bank contends that the bank has been taking appropriate measures in consonance with law, including having initiated proceedings under Section 14 of the SARFAESI Act as well as asking the respondent no.3 to clear all its dues.

As such, the bank contends that there is no scope of passing any order on the writ petition at this juncture.

Learned counsel for the respondent no.3/tenant contends that the respondent no.3 has been duly complying with all terms of the tenancy agreement and its legal duties. It is further submitted that there are no dues at present on the part of the respondent no.3 and the respondent no.3, being the tenant, is in lawful occupation of the property.

Upon hearing learned counsel for the parties, it is evident that the respondent no.5 is justified in submitting that its rights regarding the property and ensuring that the property is protected appropriately is inchoate at present, until and unless the amount as stipulated in Clause 4.2.2 of the resolution plan, that is, Rs.7 crores 92 lakhs is disbursed in terms of the instalment plan stipulated therein.

On the other hand, the reliefs claimed in the writ petition are couched in a vague manner, although the petitioners may be the present owners of the property. The remedy of the petitioners against the tenant/ respondent no.3, if any, was existent prior to the initiation of the corporate insolvency proceeding in lieu of being the owner of the property and the landlord. Further rights would accrue in favour of the petitioners if and when the property is vested in them.

However, there is no scope of this writ Court to pass directions on the bank to ensure that it complies with its duties under the law.

There is no close proximity of the prospective and previous rights of the petitioners in respect of the property with the reliefs claimed in the writ petition, which would be sufficient for this Court to grant any relief at this juncture at the behest of the petitioners.

However, it is the incumbent duty of the bank to comply with the stipulation in Clause 4.2.3 of the resolution plan, which mandates that the financial creditor and/or any other person/authority shall provide all kind of assistance and co-operation facilitating the aforesaid transaction including but not limited to assignment of security interest as contemplated therein above.

That apart, under Rule 8 of the Security Interest (Enforcement) Rules 2002, sub-Rule (3) also provides that in the event of possession of immovable property being taken by the authorised officer of the bank, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under similar circumstances, take of such property.

As such, WPO No. 1060 of 2021 is disposed of by directing the respondent no. 1 and respondent no. 2 ensure that the authorised officer of the respondent-Bank complies with the duties cast on the officer in terms of Rule 8 of the 2002 Rules as indicated above as well as in terms of Clause 4.2.3 of the corporate resolution plan (appearing at page 192, volume 2 of the writ petition).

It is made clear that this Court has not entered into the merits of the disputes raised by the parties in this writ petition as regards alleged non-compliance of its duty by the respondent no.3. However, it will be open to the parties to take legal recourse in terms of the resolution plan as and when such right accrues in favour of the respective parties.

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.)

RS/bp.