

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 25 of 2022
With
IA CAN 1 of 2022

(Through Video Conference)

Reserved on: 19.01.2022

Pronounced on: 21.01.2022

Shriram Housing Finance Limited

...Appellant

-Vs-

Sri Debasish Ghosh & Ors.

...Respondents

Present:-

Mr. Arnab Basu Mallick, Advocate
... for the Appellant.

Mr. Suddhasatva Banerjee,
Mr. Prantik Garai,
Mr. Dhiraj Kumar Gupta, Advocates
... for the Respondent no. 1

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee, Advocates
... for the State.

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the interlocutory order dated 24th December, 2021 passed in WPA No. 17460 of 2021 whereby the learned Single Judge has permitted handing over two cheques for a

sum of Rs. 5, 47, 433/- and Rs. 3, 00, 000/- by the writ petitioner to the present appellant with a further direction to the appellant to encash the same and appropriate it towards the satisfaction of his dues against the writ petitioner. The Writ Court has expressed its expectation that the writ petitioner will pay the balance amount expeditiously and the writ petition has been kept pending.

2. Submission of learned Counsel for the appellant is that the order of the learned Single Judge is not a consent order and the appellant does not wish to accept the part amount as a condition for delivery of possession and that the cheques have not been encashed and the writ petition itself is not maintainable.

3. Learned Counsel for the respondent No. 1 (writ petitioner) has submitted that the order under challenge is a consent order and since a consensus was arrived at before the learned Single Judge, therefore, the direction as contained in the order has been issued.

4. Learned Counsel for the State has also taken a stand before this Court that the order under challenge is not a consent order.

5. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the respondent No. 1 had approached the Writ Court with a plea that he had obtained a home loan from the appellant. On account of the default in the repayment, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') were initiated and consequently, the bank took possession of the property under Section 14 of the Act evicting the respondent No. 1,

hence, in the writ petition, the prayer for meeting for restoration of the possession and setting aside the order under the Act.

6. Learned Counsel for the appellant has rightly referred to the judgment of the Hon'ble Supreme Court in the matter of **Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra & Ors., AIR 2011 SC(Civil) 595, Authorized Officer, State Bank of India of Travancore and Another Vs. Mathew K.C., AIR 2018 SC 676** and the recent judgment dated 12th January, 2022 in **Civil Appeal Nos. 257-259 of 2022** in the matter of **Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir & Ors.**, wherein it has been held that as against the proceedings under Section 13(14) or Section 14 of the Act, proper remedy is to file an appeal under Section 17 of the Act and in such cases, writ is not the proper remedy. Since the issue relating to maintainability of petition has been raised, therefore, we are of the opinion that the learned Single Judge should examine the issue of maintainability of the petition before entering into the merits of the matter.

7. That apart, it is also noticed that the very fact that the order of the learned Single Judge dated 24th December, 2021, being a consent order, has been disputed before this Court. From the order, it is not reflected that it is a consent order. If that is so, then the appellant cannot be forced to accept the partial amount offered by the respondent and asked to deliver possession on that basis. It has been pointed out by learned Counsel for the appellant that the cheques have not been encashed and possession has not been restored. Therefore, at this stage we do not deem it proper to go into the disputed issue if the

order of the learned Single Judge is a consent order. Hence, we grant liberty to the appellant to approach the learned Single Judge within two weeks seeking review/recall/modification of the order dated 24th December, 2021. In the circumstances of the case, we are of the opinion that till such an application is decided by the learned Single Judge, the appellant cannot be compelled to encash the cheques and restore the possession. Hence, we dispose of this petition expecting that the learned Single Judge will first examine the issue of maintainability of the petition, if finds writ petition to be maintainable, then enter into the merits of the matter and will also duly consider the application for review/recall/modification of the order dated 24th December, 2021, if filed by the appellant, expeditiously, in accordance with law. Till that exercise is completed, no coercive action as against the appellant in pursuant to the order dated 24th December, 2021 will be taken.

8. Accordingly, the appeal along with the application is disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
21.01.2022

PA(RB)