7.2.2022 IN THE HIGH COURT AT CALCUTTA
COMMERCIAL CIVIL APPELLATE JURISDICTION
ASR 2-3 (COMMERCIAL DIVISION)

FMAT 37 of 2022
With
CAN 1 of 2022

West Bengal Financial Corporation
Vs.
Goutam Surana

FMAT 38 of 2022

Goutam Surana & Anr.
Vs.
Maa Jasoda Rice Moll Private Limited & Anr.

(Via Video Conference)

Mr. Jishnu Chowdhury
Mr. Aritara Basu
Mr. Abhijit Sarkar
Mr. Abhik Chitta Kundu
..........for the appellant

Mr. Biswaroop Bhattacharya
Mr. Debabrata Das
Mr. Pranit Bag
Ms. Mayuri Ghosh
Mr. Durbadal Sen
.........for the respondents

Each of the appeals is admitted.

As the point involved is very short we proposed to hear out the appeals and are disposing of them by this common judgement and order.

The question involved in these appeals is the valuation of the secured assets of the respondent nos. 1 & 2 for the purpose of e-auction sale by the West Bengal Financial Corporation, the appellant in FMAT 37 of 2022.

In the impugned judgement and order dated 21st January, 2022 after specifically ruling in paragraph 11 onwards that the prima facie case was heavily in favour of the said appellant/defendant no. 2, in the suit, the learned judge, Commercial Court at Asansol proceeded to observe that on the "principle of balance of convenience and irreparable loss and injury", it was necessary "to preserve the subject matter of the suit". Thereafter he ordered that the appellant would be at liberty to proceed with the e-auction sale, which shall not be made "absolute till disposal of this suit".

When according to the learned judge, the prima facie case was so heavily in favour of appellant, the order that would have necessarily flowed from such evaluation, ought not to have been aborted by relying on the principle of balance of convenience. In any case if the balance of convenience has to be taken into account the order should have been moulded so as to achieve that balance instead of making the order un-balanced towards the party in whose favour the prima facie case has been adjudged.

The dispute between the parties is within a short compus.

According to learned counsel for the appellant, Mr. Jishnu Chowdhury, e-auction was being conducted by them on the basis of a reserve price of Rs. 6 crore, declared after careful consideration of all factors including a decree obtained by the said borrowers in a civil suit.

Mr. Biswaroop Bhattacharya, learned Advocate appearing for the respondent nos. 1 and 2 in the said appeal submits that the valuation should have been Rs. 9,95,75,000/- (rupees nine crore ninety five lakh seventy five thousand).

Taking into account the prima facie case appreciated by the learned judge and the above facts we direct that the appellant Corporation shall be able to proceed with the sale without any restriction. However, the difference between Rs. 9,95,75,000/- (rupees nine crore ninety five lakh seventy five thousand) and the sum realised on account of sale shall be set apart by the Corporation and kept in a separate account upon intimation to the said respondents. This is with a view to meet the claim of damages, if any, which the said respondents may be able to establish in an appropriate proceeding. This, in our opinion, would be the proper order on consideration of the balance of convenience on the above prima facie case adjudged by the learned court below.

The appeals (FMAT 37 of 2022 & FMAT 38 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J)