

03. 01.04.2022
Ct. No.06
Tanmoy

M.A.T. 128 of 2022

**Rafi Ahamed Mollah
-Versus-
The State of West Bengal & Ors.
With
IA No: C.A.N. 1 of 2022**

Mr. Md. Salahuddin, Adv.,
Mr. Md. Ahsanuzzaman, Adv.,
Mr. Md. Raziuddin, Adv.

...for the appellant.

Mr. Raja Saha, Adv.,
Ms. Tanusri Chanda, Adv.,

...for the State.

Mr. Malay Kr. Roy, Adv.

...for the respondent nos. 4 to 6.

Mr. Bharat Chandra Simai, Adv.

...for the respondent no.9.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

This appeal is preferred against a judgment and order dated February 3, 2022 whereby W.P.A. 624 of 2022 was disposed of.

The writ petitioner/appellant had approached the learned Single Judge, challenging a sale notice issued by the Rampurhat Co-operative Agriculture and Rural Development Bank Limited for sale of 16.5 decimals of

land which was owned by the respondent no.9 in the writ petition. The story is that the writ petitioner and the respondent no.9 built a hotel on a property which was co-owned by the petitioner and the respondent no.9. The petitioner is the owner of 20.5 decimals of land and the respondent no.9 was the owner of 16.5 decimals of land. The respondent no.9 had borrowed money from the Bank. The respondent no.9 defaulted in repayment of such loan. Accordingly, the Bank took steps for recovery of its dues by sale of the portion of the aforesaid property belonging to the respondent no.9 which had been mortgaged in favour of the Bank as security for the loan advanced by the Bank to the respondent no.9.

Before the learned Single Judge the writ petitioner contended that he and the respondent no.9 were joint owners of land in question. Although the writ petitioner has obtained a preliminary decree in a suit for partition filed by him against the respondent no.9 in the appropriate Civil Court, no physical demarcation by metes and bounds between the portion owned by the writ petitioner and the portion owned by the respondent no.9 has taken place. The Bank should have notified the writ petitioner of the proposed sale. The writ petitioner is a person interested in the property and was not aware of the sale notice.

The learned Judge held that the writ petitioner was aware of the mortgage in favour of the Bank as would appear from the plaint filed by the writ petitioner in the partition suit. The Bank had been added as a party in the partition suit. The preliminary decree specifically permitted the Bank to recover the loan in accordance with law and the mortgage of 16.5 decimals in the Eastern side of the land concerned was noted by the learned Civil Judge. It was recorded that the writ petitioner's share in respect of the 20.5 decimals of land had been protected by the Civil Court in the partition suit. The Bank also submitted before the Civil Court that 20.5 decimals of land on the Western side belonging to the writ petitioner is not affected by the sale notice at all. It was finally brought to the notice of the learned Single Judge that the sale had been completed and certificate of sale had been issued by the Bank on January 27, 2022 in favour of the purchaser.

The learned Judge also recorded that neither the writ petitioner, nor the respondent no.9 took steps for setting aside the sale notice within the statutory period. It was observed that sitting in judicial review, the learned Judge did not find any illegality on the part of the Bank in the procedure adopted for recovery of the loan, particularly when the Civil Court in the partition suit had specifically allowed the Bank to recover the loan in accordance with law by enforcing the mortgage.

The learned Judge granted liberty to the writ petitioner to take steps for challenging the sale, if permitted by law.

We had, on an earlier occasion, added the purchaser as a respondent in this appeal and had directed the appellant to effect service on the added respondent. This we had done to try and see if the sale of the mortgaged portion of the property could be effected in favour of the appellant provided the appellant was willing to match the price paid by the purchaser. This exercise could not be done in the absence of the purchaser and hence, we had added him as a party. However, in spite of service, the purchaser has not appeared before us. We do not think that we can force the purchaser to appear in this proceeding before us, nor will that be proper.

We see no infirmity in the approach of the learned Single Judge and in the order impugned. The appellant will be at liberty to challenge the sale on any ground available to him in law including infraction of any statutory rule. We are not inclined to interfere with the order under appeal.

The appeal being M.A.T. 128 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are accordingly disposed of.

Interim order, if any, stands vacated.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)