198
20.04.2022
TN

WPA No. 5389 of 2022

Phalguni Bhandari
Vs.
State of West Bengal and others

Mr. Joydeep Banerjee,
Mr. Biswajit Mal
.... for the petitioner

Mr. Tapas Kr. Adhikari,
Ms. Anita Deb Jana
.... for the State

Mr. Srijan Nayak,
Mrs. Rituparna Maitra,
Mr. Biplob Das
.... for the respondent nos.2 and 3

Mr. Srinjoy Das
.... for the respondent nos.4, 5 and 6

The petitioner's contention is that the petitioner has had a rift in relation with her husband, who, along with the petitioner and others, took a loan from the respondent-Co-operative Bank. Subsequently, the debtors failed to repay such loan, upon which a notice was affixed at the residence of the husband, where the petitioner is now residing, indicating that an auction sale would be held in respect of the said residential property and not the mortgaged property. It is submitted that since the residence was not put up as security for the loan at any juncture, the Bank acted *de hors* the law in seeking to sell the same and affixing a notice in that regard at the said residence of the petitioner.

Learned counsel appearing for the respondent-Bank submits that although there was admittedly an error in the said notice as far as the mention of the address of the property was concerned, in reality, the Sale Officer has been appointed within the contemplation of law in respect of the mortgaged property itself.

Learned counsel for the Co-operative Bank places reliance on a corrigendum to the said notice, which is annexed at page-17 (Annexure-P/2) of the present writ petition and elaborates and reiterates the stand as taken by learned counsel for the Bank.

As such, in view of the corrigendum being already within the knowledge of the petitioner, since the same was dated December 29, 2021, the representation given by the petitioner through her Advocate on January 16, 2022 was evidently *mala fide.*

It is further contended that within the purview of Rule 191B (2) of the West Bengal Co-operative

Societies Rules, 2011 (hereinafter referred to as "the 2011 Rules"), the notice shall be sent by registered post with acknowledge due or be delivered by hand taking proper receipt therefor. However, if the notice cannot be served in any of two modes, the same may be served by affixing at the entrance door of the place of residence of all concerned or the last known place of residence. So far as the fact as to whether recourse was taken to the first two modes prior to affixation of the notice, the same is within the special knowledge of the Bank. However, the loan being admitted, it does not lie in the mouth of the petitioner, one of the debtors, to defend the non-payment of the same and challenge the consequential auction sale on the mere technical ground of an error which crept in the original notice, that too, in the teeth of the subsequent corrigendum which was well within the knowledge of the petitioner.

As rightly contended by learned counsel for the Bank, there is scope of affixation of notice at the entrance door of the place of residence of the concerned person under Rule 191B of the 2011 Rules. As such, it cannot be presumed without any basis that the notice served on the petitioner, including the subsequent corrigendum, which was virtually a continuation of the notice, was bad in law.

In such view of the matter, there is no scope of interference in the present writ petition.

Accordingly, WPA No.5389 of 2022 is dismissed.

However, it is made clear that this order shall not preclude the petitioner from taking recourse to the legal provisions, if any available, for repaying the loan in the meantime and getting the property back from the Bank.

The rights and contentions of the parties otherwise have not been gone into on merits by this court.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)