

03.01.2022
(S/L-04)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1019 of 2018
With
IA No. CAN 1 of 2021 (**Not found**)
IA No. CAN 2 of 2021

Dhanlaxmi Bank Limited

-Vs-

M/s. Emerald Mineral Exim Limited & Ors.

Mr. Siddhartha Banerjee,
Mr. Soumabho Banerjee,
Mr. Suchayan Bnerjee,
.... For the Petitioner.

Mr. Saptansu Basu,
Mr. Debnath Ghosh,
Mr. Shaunak Ghosh,
Mr. Rajiv Kumar,
... For the O.P No. 6.

The revisional application under Article 227 of the Constitution of India is directed against the order dated February 14, 2018 passed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal No. 80 of 2016, thereby affirming the order dated September 20, 2016 passed by the Debts Recovery Tribunal-III in OA No. 104 of 2016.

The facts relevant to address the issue involved in the present revisional application are thus, the opposite party no. 1 has borrowed money from the petitioner to purchase the suit property. The opposite party no. 6 is the builder of the suit property and the loan amount was disbursed through the opposite party no. 6.

A quadripartite agreement was entered into by and between the parties on June 29, 2011. The opposite party no. 1 and 6 in terms of the said agreement are obliged not to transfer and/or alienate the suit property without having previous written consent of the petitioner and/or without paying back the loan amount.

The petitioner alleging default in payment of the said loan has initiated a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the said Act of 1993") before the Debts Recovery Tribunal-III being OA No. 104 of 2016, inter alia, for a certificate of payment of Rs.1,80,32,125.50 as on December 11, 2015 together with interest at the rate of 14.25% per annum on and from December 12, 2015.

The petitioner, during the pendency of the said proceeding, wrote the letter dated February 02, 2016 to the Chief Executive, Indian Bank Associations informing that the opposite party nos. 1 and 6 in violation of the aforementioned quadripartite agreement has transferred the suit property in favour of a third party and have appropriated the sale proceeds.

The opposite party no. 6 in the proceeding before the Debts Recovery Tribunal filed an application being I.A. No. 742 of 2016 praying

that the petitioner may be directed to withdraw the said letter.

The Tribunal, by the order dated September 20, 2016 directed withdrawal of the said letter subject to the condition that the opposite party no. 6 is depositing a sum of Rs.1.5 crores.

The petitioner assailed the aforesaid order in appeal being Appeal No. 80 of 2016. The Appellate Tribunal by the order impugned has dismissed the said appeal.

Mr. Siddhartha Banerjee, learned advocate appearing for the petitioner submits that the petitioner in terms of the Circular of the Reserve Bank of India bearing No. DBS.CO.FrMC.BC. No.3/23.08.001/2008-09 dated March, 10, 2009 is obliged to intimate the said Indian Bank Association regarding the fraud practiced by the opposite party nos. 1 and 6 in transferring the mortgaged suit property to third party. He further submits that the Debts Recovery Tribunal while deciding an application under Section 19 of the said Act of 1993 has no jurisdiction to pass a direction for withdrawal of the said letter even on condition.

Submission of Mr. Banerjee, regarding lack of jurisdiction of the Tribunal to pass such a direction in a proceeding under Section 19 of the said Act of 1993 is not disputed by Mr. Saptansu

Basu, learned Senior Counsel for the opposite party no. 6.

He, however, submits that his client may be permitted to withdraw the money deposited by him in terms of the order of the Tribunal along with the accrued interest thereon, particularly the said letter when has not been withdrawn till date.

Mr. Banerjee, responding to the said argument of Mr. Basu submits that the money so deposited is a lien against the said loan as such the opposite party no. 6 is not entitled to withdraw the said amount.

Be that as it may, in view of the scope of a proceeding under Section 19 of the said Act of 1993, the application filed by the opposite party no. 6 in the said proceeding is not maintainable, as such, the order impugned is not sustainable and is set aside. The application being I.A. No. 742 of 2016 is dismissed.

The opposite party no. 6, however, is at liberty to approach the Debts Recovery Tribunal-III for refund of the money if deposited in terms of the order dated September 20, 2016 along with the accrued interest thereon.

If such an application is made, the said Tribunal is requested to dispose of the said

application in accordance with law within six weeks from the date of its filing.

C.O. 1019 of 2018 is disposed of with the above terms without any order as to costs.

In view of the disposal of the revisional application, the connected applications being I.A No. CAN 1 of 2021(Not on record) and I.A. No. CAN 2 of 2021 are also disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)