17.06.2022
sayandeep
Sl. No. 25
Ct. No. 05

WPA 10787 of 2022

Panchwati Enclave Private Limited & Ors.
-Versus-
Bank of Baroda & Ors.

Mr. Suman Kr. Duh
Mr. Arijit Bardhan
Mr. Soumyajit Mishra
Ms. P. Dasgupta
..... for the petitioners
Mr. Avishek Guha
Ms. A. Chopra
...... for the respondent

The petitioners are three guarantors in respect of a loan taken from the respondents, namely the Bank of Baroda and seek recalling of an auction Sale Notice dated 25.05.2022. The ground shown for appropriate orders is that the Debts Recovery Tribunal-III is presently facing a cease work which would be evident from a communication from the DRT Bar Association which states that advocates shall not appear before the Presiding Officer DRT-III until further notice.

Learned counsel appearing for the petitioners submits that the petitioners are facing a peculiar situation since an earlier Sale Notice dated 16.09.2021 issued by the respondents for the same properties and that an application challenging such Notice under Section 17 of the SARFAESI Act, 2002 is presently reserved for Judgment after a contested hearing.

Learned counsel appearing for the Bank places a Notification of the Ministry of Finance dated 15th March, 2017 which shows that the impugned Sale Notice is for properties within Hare Street Police Station which would give jurisdiction to DRT I and hence the petitioners could very well have filed an appropriate application before the DRT I which is functioning as on date. Counsel further states that the impugned Notice dated 25.05.2022 gives rise to a fresh cause of action and hence the Bank was not bound by the earlier Sale notice or the proceedings which ensued from such Notice. Counsel also submits that the earlier sale Notice of 16.09.2021 restricted the matters to said Notice and no connection can therefore be drawn between the earlier and the subsequent Notice which is impugned in the present proceedings.

The documents on record as well as the pleadings in the present petition show that the earlier Sale Notice of 16.09.2021 gave rise to an application filed by the petitioner for stay of such notice. The interim order was passed in such application being SA 431 of 2021 on 04.10.2021 by DRT -III directing the respondent Bank to defer the date of auction sale. By a second order in the same application dated 05.11.2021, the impugned Sale Notice was stayed till disposal of the applications filed in SA 431/2021. The last order passed in those proceedings of 21.03.2021 reflects that arguments were concluded on behalf of the petitioner (being the applicant before DRT-III) and that the respondent Bank was not ready with its reply. The matter was made reserved for final order on that date and the parties were given liberty to file their written notes of arguments.

The impugned Sale Notice dated 25.05.2022 was issued by the Bank on the petitioners in respect of the sale of two properties. The only difference was that the order of the two properties was changed in the said Notice. The e-auction in respect of the impugned Notice is scheduled to be held today, i.e. 17^{th} June, 2022. The petitioners filed an application dated 2^{nd} June, 2022 before the DRT-III stating the fact of the interim orders and the subsequent Sale Notice of 25^{th} May, 2022. It is clear from the above documents on record that both the sale notices dated 16.09.2021 and 25.05.2022 are in respect of the same properties.

It is hence inconceivable that while the application for stay of the first Notice was pending final orders, the respondent Bank would have proceeded to issue the second Notice which is impugned in the present proceedings. The objection taken with regard to the petitioners not approaching DRT I on the basis of the Police Station mentioned in the notice and the

Ministry of Finance Notification dated 15th March, 2017 cannot be acceptable for two reasons. Fist, the respondent Bank participated in the application against the first Sale Notice which would be evident from the orders passed by DRT-III and failed to take such objection at any point of time. Second, the concerned Police Station, namely Hare Street Police Station, which has been pointed out on behalf of the Bank in the second impugned Notice to show that the petitioners could very well have approach DRT-I, was also the designated Police Station in the first Sale Notice with identical scope and consequences without demur and protest. The respondent Bank cannot be allowed to take objection to jurisdiction of DRT-III in the present application.

A fresh cause of action would necessarily depend on a material subsequent event between the two Sale Notices which would give rise to a cause of action by which the respondent Bank may be entitled to proceed afresh against the petitioners. The second Sale Notice does not disclose any such significant subsequent event.

The respondent Bank was a party to and fully aware of the interim orders passed in favour of the petitioners on three occasions before the matter was made reserved for final orders. When the entire situation is pending consideration, the respondent Bank should have stayed its hands with regard to a fresh Notice involving the same properties. Needless to say, interim orders are deemed to continue till delivery of final orders and not till the matter is reserved for Judgment.

The notices of cease work shows that the petitioners at present do not have option but to come before this Court for appropriate orders. The petitioners cannot be compelled to go before a different Bench in the DRT since there may be a likelihood of conflicting orders to the prejudice of the petitioners. Since the petitioners are enjoying interim orders in their favour, they cannot also be compelled to test their luck before a different Bench.

It is made clear that this Court has not gone into the merits of the case. The petitioners however are entitled to some sort of interim protection till the matter is considered by DRT-III where the first application against the first sale Notice is pending. The petitioners filed an application against the impugned Sale Notice before DRT-III on 2nd June, 2022. Since the petitioners cannot approach DRT-III for any form of relief by reason of the on going cease work, the learned Presiding Officer is requested to dispose of SA 431/2021 within a period of two weeks from the date of communication of this order. This direction is with reference to the last order passed by DRT-III on 21.03.2022 which records that final Judgment will be passed after waiting for 10 days. The petitioner should be protected from the impugned sale Notice of 25.05.2022 and the respondents shall be restrained from proceeding in terms of the said Notice till one week after passing of final orders by DRT-III in SA 431/2021.

WPA 10787 of 2022 is disposed of in terms of the above.

The affidavit-of-service is kept on record.

Learned counsel appearing for the respondent Bank seeks stay of the operation of the order. Considering the material on record and the conduct of the Bank in proceeding with the second Notice for the same properties during pendency of the final orders in the first Notice, such stay is considered and refused.

(Moushumi Bhattacharya, J.)