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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 15686 of 2021

Dilip Kumar Biswas

-vs.-

State of West Bengal & Ors.

Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee
...for the petitioner

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee
...for the State

Mr. Pradip Kumar Ray,
Mr. Biplab Das
...for the respondent nos. 3 and 4

Despite service, none appears for the respondent nos. 5 to 9, although the petitioner and the respondent nos. 1 to 4 are represented through counsel. Affidavit-of-service filed in Court today be kept on record.

Learned counsel appearing for the petitioner contends that taking advantage of the naïvety of the petitioner, the respondent no. 5/Co-operative Society had a sale deed executed, instead of a deed of mortgage, despite having given an impression to the petitioner, at the time of advancing a loan to the petitioner, that the property was being taken by way of a security and only

a mortgage would be executed. Subsequently, upon detection of such mistake in the deed, which was fashioned as a sale deed, the petitioner communicated in writing with the respondent no. 5/Society in that regard, to which the said respondent, through its officials, gave several replies in writing, wherein the respondent no. 5 admitted the position that, due to a mistake, the mortgage deed was erroneously registered as a sale deed.

Subsequently, the Society has been exerting pressure amounting to coax the petitioner to execute a transfer deed in respect of the roof of the petitioner's building in exchange of the society executing a transfer deed of the property back in the name of the petitioner.

In such view of the matter, learned counsel for the petitioner seeks an investigation into the affairs of respondent no. 5 and for ancillary remedies restraining the respondent no. 5 from taking any coercive measures against the petitioner, including seeking mutation and other consequential reliefs, by proceeding on the premise that the document-in-question is a sale deed and not a mortgage deed.

Upon hearing learned counsel appearing for the appearing parties, it is evident that the relief of the petitioner with regard to rectification of the deed on the ground of a mutual mistake of the parties lies in a suit

before the competent civil court under Section 26 of the Specific Relief Act, 1963.

However, since it appears from the materials annexed to the writ petition that the respondent no. 5 substantially admitted the position that the sale deed was executed by a mutual mistake, the said respondent ought not to be permitted to exert undue influence on and/or apply coercive tactics against the petitioner on the premise that the disputed document is a sale deed and not a mortgage deed.

In such view of the matter, W.P.A. No. 15686 of 2021 is disposed of by restraining the respondent no. 5 from taking any coercive action against the petitioner on the premise that the document executed between the parties on May 22, 2013, is a sale deed.

However, the restraint order shall remain in force for one month from date or until the date on which the petitioner is able to bring an appropriate order from a competent civil court, whichever is earlier.

The petitioner is granted liberty to approach the competent civil court by instituting a suit under Section 26 of the Specific Relief Act, 1963 for rectification of the deed-in-question.

If such a suit is filed by the petitioner, the civil court will be at liberty to decide the same and to consider the grant of interlocutory orders, if prayed for,

in accordance with law without being prejudiced in any manner by any of the observations made herein.

The petitioner is further granted liberty to carry on contesting the mutation case, bearing Mutation Case No. 2021/1303/11490, in the event the said case is still pending.

Irrespective of the above observations, it will be open to the petitioner to challenge the mutation, if aggrieved thereby, and/or seek any other remedy available to the petitioner in the context in law, subject to compliance of all legal formalities by the petitioner.

If so approached, the respective forums will not be influenced in any manner by any of the observations made herein while adjudicating such dispute.

The respondent no. 5 is further directed to hand over copies of the loan agreement executed between the petitioner and the respondent no. 5 and up-to-date statements of account in respect of the petitioner's loan account, maintained with the respondent no. 5, as expeditiously as possible, positively within a fortnight from the date of communication of this order to the respondent no. 5.

The petitioner shall communicate this order to the non-appearing respondents and all parties shall act on the server copies of the same, coupled with communication by the learned advocate appearing for

petitioner, without insisting upon prior production of a certified copy thereof, for the purpose of compliance.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)