15.02.2022
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C.O. 1796 of 2021
(Via Video Conference)

Sri Bivas De & Anr.
-Vs-
HDFC Bank Limited

Mr. Kumarjyoti Tewari
... for the petitioner

Mr. Shamit Sanyal,
Mr. M. Kanji,
...for the bank

The present revision is at the instance of the defaulter/borrower being aggrieved by order dated 21.09.2021 passed by the learned Debts Recovery Tribunal-1, Kolkata in O.A. Case No. 475 of 2019 whereby the learned Debts Recovery Tribunal-1, Kolkata has been pleased to allow the HDFC Bank Limited to add Chief Manager (Contract) ERO (IOCL) as *proforma* defendant.

At the very outset it is required to be noted that in view of the direction of the Hon'ble Supreme Court in the absence of Chairperson of Debts Recovery Appellate Tribunal, Kolkata, this Hon'ble High Court has been vested with power to hear matter arising out of DRT, Kolkata otherwise from whose order appeal lies before the learned Debts Recovery Appellate Tribunal, Kolkata, The facts necessary for determination of the present application under Article 227 of the Constitution of India in gist is that sometime in the year 2018 Indian Oil Corporation Limited floated a tender process for transportation of LPG Gas Cylinder from its Bottling Plant at Raninagar to the distributors throughout West Bengal.

In order to participate in such tender process the petitioners purchased 22 numbers of commercial vehicles after obtaining loan of Rs. 3,97,50,000/- from HDFC Bank against the 22 commercial vehicles loan. That wife of the petitioner stood as a guarantor of such loan. That as per agreement the petitioners were required to pay EMI of Rs. 26,62,499/- with effect from 1.10.2018. That due to late payment petitioners have been charged Rs.6,08,263/- by the bank. That on the request of the petitioners the bank agreed to LPP of Rs. 2,68,031/- out of the total LPP dues of Rs.6,08,263/- up to April, 2019. That due to adverse report submitted by the Bank and low rating by the Credit Information Bureau (CIBIL), the petitioners are unable to secure bank loan or any financial assistance from any bank or financial institutions and as such the petitioners moved the Writ Petition No. 23906(W) of 2019 before the Hon'ble High Court at Calcutta which is still pending.

That bank agreed to waive LPP charge of Rs.12,58,707 subject to clearance of entire loan amount of Rs.1,10,62,493/- on or before 31.10. 2019. Then petitioners wrote to the bank for waiver of LPP charge for payment of the entire outstanding dues, but bank threatened to take possession of those vehicles.

Finding no alternative the petitioners filed Title Suit No. 624 of 2019 before the Court of the learned Civil Judge (Junior Division), 1st Court, Barasat and obtained ex parte order of injunction restraining bank from taking possession of those hypothecated vehicles without due process of law.

In the meantime DRT-1, Kolkata appointed a receiver to take possession of those hypothecated vehicles on the basis of order dated 06.12.2019 passed in O.A. Case No. 475 of 2019. Being aggrieved by such order the petitioner moved the Hon'ble High Court in C.O. No. 40 of 2020 and where operation of the order dated 6th December, 2019 was stayed and directed the petitioner to file an appeal. Accordingly, petitioners have filed an appeal being Appeal No. 09 of 2020 and which is still pending due to vacancy in the DRAT.

During the pendency of the appeal the bank filed I.A. No. 1423 of 2021 adding IOCL as proforma defendant. It has been contended by the petitioners that IOCL is neither a necessary party nor a proper party for the adjudication of the lis. The bank is acting in violation of the terms and conditions of the loan agreement making IOCL and Piyali De the guarantor of the loan as parties to the proceeding.

Admittedly, the petitioners are principal borrower and the guarantors of the loan which they took to purchase 22 numbers of commercial vehicles for transporting LPG Gas from Bottling Plant of IOCL located at Raninagar, Jalpaiguri to different distributors throughout West Bengal. The bank had accommodated a loan of Rs.3,97,50,000 to the principal borrower. Unfortunately, the principal borrower has failed to repay the loan amount as per terms and conditions of the loan agreement as such the outstanding loan was subjected to LPP charge. It appears from record that bank agreed to waive LPP charge of Rs.12,58,707/- provided the borrower and the guarantor repay the entire outstanding loan of Rs.1,12,62,493/- on or before 31st October, 2019 and which the petitioners have failed to comply rather they have filed one proceeding after another against the bank for taking any legal steps and action against them.

It is seen the petitioners have placed all those 22 vehicles at the disposal or service of IOCL for transporting LPG from bottling plant at Raninagar in Jalpaiguri, to the different distributors throughout West Bengal in return of hire charge. It has also come on record that due to poor performance of the petitioner no. 1 in repayment of loan in time, his rating has been lowered by CIBIL and due to which other financial institutions and banks have stopped accommodating any kind of loan to them. From such very facts it is seen the petitioners have the habit of taking loan from different financial institutions or banks. It can also be assumed that the petitioners may have the habit of taking loan or financial assistance from one bank or financial institutions in payment of loan taken from another banks and financial institutions and due to low rating and non-availability of loan from other banks and financial institutions they defaulted in payment of loan in question.

Therefore, IOCL in whose disposal those 22 vehicles hypothecated to the bank against the loan are placed for service and disposal by the petitioners on monetary charges is a necessary party for the purpose of realization of the outstanding dues from the outstanding bills payable to the petitioners towards hire charge of those vehicles and for recovery of those charged/hypothecated vehicles in favour of bank and at present placed in disposal of IOCL by the petitioners.

Therefore, this Court too is of view IOCL is a necessary party in the present proceeding and does not find any reason to interfere with the impugned order passed by the learned DRT-1, Kolkata.

Accordingly, **C.O 1796 of 2021 is dismissed.**

Connected application, if any, is disposed of.

Interim order, if any, stands discharged.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J**.)