

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 1101 of 2021

with

CAN 1 of 2021

With

CAN 2 of 2021

With

CAN 3 of 2021

&

MAT 1123 of 2021

With

CAN 1 of 2021

With

CAN 2 of 2021

With

CAN 3 of 2021

(Through Video Conference)

Reserved on : 08.06.2022

Pronounced on: 12.07.2022

Parakh Projects Private Limited & Anr.

.... Appellants in MAT

No. 1101 of 2021

-Vs-

Rawalwasia and Sons Exim Limited & Ors.

...Respondents

&

The Baidyabati Sheoraphuli Cooperative Bank Limited

...Appellant in MAT

No. 1123 of 2021

-Vs-

Rawalwasia and Sons Exim Limited & Ors.

...Respondents

Present:-

Mr. Sakya Sen,
Mr. Sankarsan Sarkar, Advocate
.... for the Appellants in MAT 1101 of 2021

Mr. Tapan Kumar Mukherjee, Senior Advocate,
Mr. Himadri Sikhar Chakraborty,
Mr. Naren Ghosh,
Ms. Debdooti Dutta, Advocates

.... for the State respondent in MAT 1101 of 2022

Mr. Ankit Sureka, Advocate
.... for the Baidyabati Sheoraphuli
Cooperative Bank Limited

Mr. Sanjib Dutta,
Mr. Sk. Sujauddin, Advocates

.... for the Respondents/ Writ Petitioners
in MAT 1101 of 2021

Mr. Sanjib Dutta,
Mr. Monoj Kurmi, Advocates

.... for the Respondents/ Writ Petitioners
in MAT 1123 of 2021

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, CAN 3 of 2021 in MAT 1101 of 2021 and CAN 3 of 2021 in MAT 1123 have been filed seeking leave to file appeal against the judgement and order dated 23rd April 2021. Submissions of the learned counsel for the appellants in both the appeals is that thought the appellants are directly affected by the order of the Learned Single Judge they were not made party in the writ petition. It has been pointed out that the appellants are the necessary parties in the writ petition.

2. In CAN 3 of 2021 in MAT 1101 of 2021 learned counsel for the appellants has pointed out that the order of injunction was existing which was in favour of the appellants but was not brought in the notice of the court and in such circumstance, the impleading of the appellants was necessary. Similar is the submission of the learned counsel for the appellant in CAN 3 of 2021 in MAT 1123 of 2021 is that the bank was a necessary party and respondent no.6 in the writ petition was only the acting chief manager and the bank was not impleaded separately.

3. The facts of the case in MAT 1123 of 2021 are that on 05.01.2011, one Mukti Oil Mill Private Limited entered into a notarized agreement for sale with one Rawalwasia Son Exim Limited herein the Respondent No.1 to purchase a property measuring about 22 bighas for a price of Rs. 5,00,00,000. Mukti Oil Mill Private Limited bearing a membership number 27142 of Baidyabati Sheoraphuli Co-operative Bank Limited, had approached the appellant bank for availing a loan of Rs. 4,00,00,000 on 24.10.2011 and a loan, was sanctioned in favor of Mukti Oil Mill Private Limited on the basis of the said notarized agreement and property to be mortgaged in favor of the Appellant bank on or before disbursement of loan amount. Although the entire amount of Rs. 4,00,00,000 as per Clause 2 of the said agreement for sale dated 05.11.2011 was remitted to the Respondent but the said property was not mortgaged before the Appellant bank.

4. However, the loan Account under reference was declared as Non-Performing Asset on 31.03.2012. On intimating the same to the respondent No.1 vide Letter no. HO/335/13-14 dated 11.06.2013 and thereafter sending a legal notice on 12.04.2015 whereby requesting either to mortgage the property before the appellant bank or refund the public money, the respondent continued to enjoy the public money without mortgaging the subject property before the appellant bank.

5. The Appellant Bank on 19.12.2013 lodged an FIR being 563/2013 before the Serampore Police Station against the respondent No.1, Mukti Oil Mill Private Limited and others under section 420/406/120B of IPC. However, since the said property was not mortgaged before the Appellant bank, they were restrained from filing a suit (72896 of 2017) for declaration of permanent and mandatory injunction under Order 39 Rule 1 & 2 of The Code of Civil Procedure. Nonetheless, the Learned Court by an order dated 28.11.2017 granted an ad interim order of injunction in the aforesaid suit whereby restraining the respondent No.1 from transferring the subject property.

6. Therefore, the appellant bank became a necessary party for the adjudication of the issue under reference. Although, the Appellant bank had a separate entity, it was not impleaded as a party. However, learned counsel for the respondent no 6, who was being impleaded in the writ petition contended that the petitioner company, in violation of the injunction order, had been transferring the property in question in favor of third parties and thus, the police was justified in stopping such development work.

7. In MAT 1101 of 2021, the appellants namely Parakh Projects Pvt Ltd. have appealed against the order passed by the Hon'ble Single Judge arising out of WPA No.6282 of 2021. Learned counsel appearing for the appellants submits that the petitioner No.1 fraudulently obtained the impugned order dated April 23, 2021, that the impugned order should be stayed or set aside and that there are disputed questions of facts involved in the writ petition and the dispute in the writ petition is clearly civil in nature. It was also contended that the Learned Single Judge failed to appreciate that Rawalwasia and Sons Exim Limited & Ors. had entered into a registered development agreement dated June 12th, 2019 with Parakh Projects Pvt Ltd. for the purpose of developing the said premises and that there is an error in law as well as facts in disposing of the writ petition as restraining the respondent No.4 from creating any obstruction to the development/construction work being undertaken by the petitioner No.1 company in the said premises is subject to any subsequent order, if passed by a competent Court against that petitioner No.1 company.

8. Moreover, it was argued that the petitioners have suppressed that the petitioner No.1 had also executed a registered power of attorney in favour of Jatan Lal Parikh, being the director of applicant no.1 on June 2019, inter alia, to facilitate the development of the said premise. Moreover, the petitioner No.1 executed two power of attorneys one in favour of Laltu Paswan and other in favour of Debashsish Dey, inter alia, empowering both of them to sell portions of the said premise, which also forms the subject matter of the registered development agreement and registered power of attorneys, both dated June 2019 executed by and between petitioner no. 1 and applicant No.1 here.

9. Having heard the counsel for parties and on perusal of records, this Court is of the view that although in both the cases the appellants are directly affected by the order of the Learned Single Judge, they were not made party in the writ petition. In CAN 3 of 2021 in MAT 1101 of 2021, although the order of injunction was in favour of the appellant, namely Parakh Projects Pvt. Ltd., it

was not brought in the notice of the court. Without hearing the necessary party, Parakh Projects Pvt. Ltd., but allowing the writ petitioners, Rawalwasia and Sons Exim Limited & Ors., to carry out construction in the said premises was not justified. Similarly, in CAN 3 of 2021 in MAT 1123 of 2021 the appellant bank, namely Baidyabati Sheoraphuli Cooperative Bank Limited was a necessary party for adjudicating the issue under reference. The lower court had no scope to consider the bank as it was not impleaded separately and only the Chief Manager of Baidyabati Sheoraphuli Cooperative Bank Limited was made respondent no. 6 in the writ petition. Therefore, the appellant bank is a necessary party for the adjudication of the issue under reference but it was not impleaded as a party.

10. Thus, the order of the Learned Single Judge is set aside on the ground of non-joinder of parties and both the matters are remanded to the Learned Single Judge for fresh adjudication and the appeal is accordingly disposed of. All pending application are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

12.07.2022
PA(BS)