

23.11.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.2204 of 2022

**M/s. Hotel Blue Star & ors.
Vs.
West Bengal Financial Corporation & anr.**

Mr. Kaushik Dey,
Mr. Debnath Mahata
...for the petitioners

Mr. Aritra Basu,
Mr. Abhijit Sarkar
...for the opposite party no.1

Subject-matter of challenge in this case is against the rejection of a prayer for stay, proposed by the petitioner, by impugned order dated 31st March, 2022, passed by learned District Judge, Bankura, in Judicial Misc. Case No.11 of 1996.

Admittedly, the petitioners borrowed money from the opposite parties in connection with a loan transaction. For the non payment of the entire dues, there has been a proceeding instituted by opposite parties under the provisions of the West Bengal Financial Corporation Act, 1951, being Judicial Misc. Case No.11 of 1996 for ventilating the grievance regarding unpaid money of the petitioners.

In the midst of the proceeding, an application has been filed by the petitioners on 7th May, 2005, proposing stay of the Misc. Case upon making

reference of institution of a Title Suit No.99 of 1997, now pending before learned Civil Judge (Senior Division), Bankura.

Mr. Dey, learned advocate appearing for the petitioners submits that the Title Suit No.99 of 1997 is substantive in nature, and it is also comprehensive one disclosing all points in the pleadings, already submitted.

It is contended by Mr. Dey that some important and significant facts could not be disclosed even by filing opposition in the existing Misc. Case, now pending before the learned District Judge, Bankura.

Incidentally, it is contended by Mr. Dey that decision of Title Suit No.99 of 1997 would govern the fate of existing Misc. Case, if decided in accordance with law upon addressing all the points raised in such pending suit.

Mr. Aritra Basu, learned advocate appearing for the opposite party no.1 disputes with the submission advanced by the petitioner, replying to the fact that provisions of Section 10 would not be applied over the facts and circumstances of the case, as the fundamental test of Section 10 is whether the decision of pre institution suit would operate as *res judicate* in a subsequent suit.

According to Mr. Basu, Misc. Case has been initiated long before the institution of the Title Suit No.99 of 1997.

Repudiating the contention of Mr. Dey, Mr. Basu submits that the impugned order does not call for any interference, as the prayer for stay is not necessary otherwise in the given circumstances of the case.

Having considered the submission of both sides, it appears that pending Misc. Case filed by the opposite party no.1 is independent one, proposing independent prayers doing adherence to the mandatory requirement of the law, prescribed in the Act itself. Mere existence of a subsequent suit, would not automatically entitle the petitioners to pray for stay.

As per submission disclosed by the petitioners that some of the documents together with some significant relevant facts could not be disclosed in the existing Misc. Case, in the opposition already filed, there is scope for redressing grievance on such issue, taking recourse to the provisions available under the Code of Civil Procedure, but for that reason, the movement of the existing Misc. Case may not be allowed to be stayed.

This would not, however, prevent the petitioner to take recourse to provisions of law for making necessary correction of the written objections, if at all needed, subject to the provisions of the law.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)