7&8 02.03.2022
Ct. No.21

R.V.W. 42 OF 2022
WITH
IA No. CAN 1 OF 2022
IN
C.O. 1960 of 2021

M/s Untag Fashions Private Limited & Ors.
-Versus-
UCO Bank Kolkata Main Retail Branch & Anr.

(Through Video Conference)

Mr. Aniruddha Chatterjee,
Ms. Jayati Chowdhury,
Ms. Emon Bhattacharya,
Ms. Ranjana Seal,
Ms. Pooja Sah,
...for the Applicants
Mr. Nimish Mishra,
Mr. Sailesh Mishra,
...for the UCO Bank

The present application is at the instance of the petitioners/defaulter borrowers of SA No. 41 of 2020 and CO. No. 1960 of 2021 for review of order passed by this Court on 22.02.2022 whereby this Court has refused to set aside impugned order of rejection of amendment petition filed by the petitioners in SA No. 41 of 2020 before DRT on 09.11.2021.

The learned Lawyer for the petitioners/defaulter borrowers submits that the order passed by this Court on 22.02.2022 is apparently error by not considering the Schedule B and Schedule C of the amendment petition, whereby the petitioners have brought facts subsequently developed after filing of the SA 41 of 2020 before the DRT. Those facts were not mentioned in the original SA. If those subsequent facts are not brought in original SA by way of amendment then the petitioners will suffer irreparable loss and injury. Thus he prays Schedule B and Schedule C of the amendment petition may be allowed.

On the other hand, the learned Lawyer appearing for the opposite party/bank vehemently raises objection and submits that SA No. 41 of 2020 has already been dismissed by the DRT on 21.04.2022. The present Review Application is nothing but an abuse of process of law by the petitioners to avoid payment.

He further submits the petitioners have right to prefer an appeal under Section 18 of SARFAESI Act of 2002 before DRAT, Kolkata against the dismissal of SA 41 of 2020 by the DRT on 21.04.2022. The petitioners by filling the present Review Application is buying time or they want to avoid filling appeal where they need to deposit fifty per cent of the awarded outstanding amount which is more than Five Crore.

Learned Lawyer for the opposite party/Bank further submits that petitioners being a defaulter borrowers and whose debt/liability has been classified as Non Performing Asset is required to discharge its full liabilities to the Bank within 60 days from the date of notice. Defaulter borrowers can make representation or raise objection against such notice under Section 13 of SARFAESI Act of 2002. In the present case the Bank has considered and rejected the same within 15 days of receipt of representation/objection from the defaulter borrowers as borrowers have failed to clear its full liabilities.

In the present case the petitioners/defaulter borrowers who have failed to comply the provision as laid down in under Section 13 of SARFAESI Act, 2002, have filed an application under Section 17 of SARFAESI Act of 2002 being SA No. 41 of 2020 which already stands disposed of and is no more in existence. Therefore, the present review application filed by the petitioners against an order of rejection of their amendment application by DRT in SA No. 41 of 2020 and rejection being affirmed by this Court has become infructuous. Learned Lawyer for the Bank submits the petitioners/defaulter borrowers want to ripe fruits from a tree which is already being cut down.

On the other hand learned Lawyer for the petitioners submits the amendment sought under Schedule B and Schedule C was not rejected by this Court and had left such amendment open to be decided by DRT at the time of hearing of argument in SA 41 of 2020 and which the DRT has failed to take into consideration at the time of final hearing of SA 41 of 2020.

On enquiry learned Lawyer for the petitioners submits that after the institution of SA No. 41 of 2020 defaulter borrowers have deposited a sum of Two Lakh to the bank and defaulter borrowers have brought such facts in Schedule B and Schedule C of the amendment application. If that be so, this Court has rightly observed the facts mentioned in Schedule B and Schedule C should be brought to the notice of the DRT, who will decide the actual outstanding due payable by the defaulter borrowers/the present petitioners to the secured creditors / the Bank.

It is settled principle of law once a judgement is signed and pronounced it cannot afterward be altered unless there is apparent error on the face of the order and if such error/mistake is permitted to remain in the record it is likely to cause miscarriage of justice. In the present case I do not find the plea taken by the petitioners to be an exceptional and which entail review of the order passed by this Court on 22.02.2022. The facts that any payment made by the defaulter borrowers in discharge of their liability or debts classified as Non-Performing Asset is required to be taken into consideration at the time of final satisfaction of the decree or award passed by the

DRT or in the execution proceeding, if any, initiated by the secured creditor against the defaulter borrowers. Therefore, this Court is of view the facts mentioned in Schedule B and Schedule C of the amendment petition will be taken care automatically. That apart at present the SA No 41 of 2020 in which the petitioners/ defaulter borrowers seek amendment is no more in existence being dismissed by DRT on 21.04.2022.

Accordingly, Review Application 42 of 2022 and CAN 1 of 2022 are dismissed.

There will be no order as to costs.

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**.)