AD-23
Ct No.09
22.08.2022
TN

WPA No. 18755 of 2022

Rachna Chowdhury
Vs.
Punjab National Bank and others

Mr. Shamshunath Ray,
Mrs. Amrita Tewari,
Mr. Varun Raj Tiwari,
Mr. Mohinimohan Bhattacharya
.... for the petitioner

Mr. Sanajit Kr. Ghosh,
Mr. Bodhisatta Basu
.... for the respondent nos.1 & 2

Affidavit-of-service and the returned envelope filed in court today be kept on record.

Learned counsel for the petitioner contends that due to no fault of the petitioner, the petitioner was sold a property by one Sadhana Chakraborty by suppressing the fact that the said property had already been mortgaged in favour of the respondent-Bank.

Subsequently, upon the police having visited the said property, where the petitioner has been residing, the petitioner grew wiser and undertook a search, the report of which revealed the details of such mortgage. It is submitted that the petitioner then approached with a challenge before the Debts Recovery Tribunal (DRT) – III, Kolkata but could not get the said application or the connected stay application heard by the said Bench, initially due to certain unforeseen circumstances being by way of a lawyers' unrest going on before the tribunal and subsequently the Third Bench has become vacant, for which the matter could not be taken up till date.

It is further submitted by learned counsel for the petitioner that, in the meantime, the Bank has already taken effort twice to sell out the property by way of e-auction, but both times such effort has failed. Subsequently, for a third time, a notice has been published by the Bank for another e-auction being published on August 25, 2022. It is submitted that since the petitioner's application before the tribunal would virtually be rendered infructuous if the sale is concluded, the said notice may be stayed.

Learned counsel for the respondent-Bank, by placing reliance on the averments made in the writ petition and the annexures thereto, contends that the petitioner was well-aware from the search report that the property was mortgaged to the Bank. It is submitted that despite the purchase of the petitioner being only in the year 2022, the property was given in mortgage in the year 2012 against a loan by the petitioner's vendor-Sadhana Chakraborty. It is submitted that the Bank is not at fault in any manner and has not committed any illegality in attempting to sell the property to recover the money long due to the Bank. Moreover, since the petitioner has already invoked the jurisdiction of the tribunal, which is competent to grant the reliefs sought here, this court ought not to interfere under Article 226 of the Constitution of India, which envisages only judicial review on certain specific yardsticks, which are not met in the present case.

Heard learned counsel for the parties.

It is seen from the materials on record that, admittedly, the property-in-question was mortgaged to the respondent-Bank prior to the purchase by the petitioner. Appreciating fully that the petitioner was not at fault, we cannot find fault with the Bank as well in making due efforts to sell the property to recover the money due to the Bank.

In view of the non-availability of the third Bench of the Debts Recovery Tribunal, Kolkata at present, this court entertains the present writ petition under Article 226 of the Constitution of India, which might not have been done under normal circumstances, if the regular Bench of the Tribunal was available.

Upon a consideration of the submissions of the parties, the ends of justice would be sub-served in the event the e-auction notified by the Bank is held on due date but the results thereof are not published prior to a decision taken by the DRT concerned on the stay application of the petitioner.

Hence, WPA No. 18755 of 2022 is disposed of by directing the first Bench of the Kolkata Debts Recovery Tribunal to take up for hearing the pending applications filed by the petitioner before the DRT-III and decide on the ad-interim prayer for stay made by the petitioner in connection therewith as expeditiously as possible, preferably within six weeks from date.

In the meantime, although the respondent-Bank shall proceed with the e-auction scheduled on August 25, 2022, unless the same is thwarted due to some other reason not connected with the present matter, but shall not publish the results/outcome thereof till any order is passed on the interim application for stay filed by the writ petitioner before the DRT.

It is made clear that the petitioner would be entitled to participate in the said auction, if the petitioner so chooses, without prejudice to the rights and contentions of the petitioner in the writ petition and/or in the proceedings before the DRT and/or any other forum. The result of the e-auction shall be subject to the orders passed by the Debts Recovery Tribunal.

The parties as well as the DRT, First Bench, Kolkata shall act on the server copy of this order along with communication by the learned Advocates for the parties for the purpose of compliance, without insisting upon prior production of a certified copy thereof.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)