29.08.2022
Sl. No.10(SL)
srm

W.P.A. No. 19690 of 2021

Sk. Enamul Haque

Versus

The State of West Bengal & Ors.

Mr. Ziaul Haque,
Mr. Himadri Kumar Mahata
…for the Petitioners.

Mr. Amal Kumar Sen,
Mr. Jaladhi Das
…for the State-respondents.

Mr. Ritwik Pattanayak
…for the Respondent No.3.

Mr. Sanat Kumar Roy,
Mr. Atanu Basu
…for the Subsequent Purchaser of the vehicle.

The petitioner is the borrower. He had taken a loan from the Contai Co-operative Bank Limited, Belda Branch. The vehicle bearing No.WB33C/7786, was hypothecated to the bank. The petitioner failed to pay the instalments. The bank approached the petitioner to pay up the loan along with the notice that the hypothecation agreement shall be enforced. Aggrieved, the petitioner filed a suit for declaration and permanent injunction being OS No.41 of 2019, before the learned Civil Judge, Junior Division, 1st Court at Midnapore. A notice was issued to the petitioner on March 6, 2019 for regularisation of the account, upon payment of the outstanding dues. By a letter dated December 21, 2020, the Regional Transport Officer, Paschim Medinipur directed the petitioner to surrender the certificate of registration of the aforementioned vehicle. The petitioner approached the Regional Transport Officer by a representation dated December 30, 2020 , with a prayer that the vehicle must not be transferred in the name of the subsequent purchaser. By a demand of justice dated October 5, 2021, the petitioner through his learned Advocate approached the Branch Manager, Belda Branch, Contai Co-operative Bank Limited and prayed for return of the vehicle, upon realisation of the amount due.

The learned Advocate for the subsequent purchaser, submits that the sale took place on November 6, 2020. The possession of the vehicle was taken over from the petitioner on March 16, 2020.

Another suit was filed by the petitioner, being OS No.14 of 2021. Both the suits being OS No.41 of 2019 and OS No.14 of 2021, which were filed on the alleged demand and decision to sell the vehicle, were dismissed, as the petitioner failed to take steps.

The learned Advocate for the Contai Co-operative Bank Limited submits a bunch of documents, including the hypothecation agreement. It appears that clause 19 of the said agreement permits the bank to repossess the hypothecated vehicle, in case of default.

In exercise of power vested upon the bank by the said clause, the vehicle was repossessed by the bank on March 16, 2020, in presence of the petitioner. A demand notice was once again served on March 17, 2020, upon the petitioner. The petitioner remained silent. Clause 19 of the said agreement empowers the bank to sell the repossessed vehicle either by public auction or private sale or otherwise. It is submitted before the Court that although a public auction was arranged pursuant to a publication in the newspaper, indicating the details of such auction, there were no bidders. Thereafter, by invoking clause 19 of the hypothecation clause, the private contract was entered into between the bank and the subsequent purchaser. The sale was through a private contract as per clause 19 of the hypothecation agreement. The sale was finalised on November 6, 2020. The petitioner did not approach the authority within the stipulated time, as per law, for setting aside the sale. The petitioner did not show any inclination to pay up the dues. The petitioner did not proceed with the suits.

At this juncture, when the ownership has passed to the subsequent purchaser in accordance with the terms and conditions of the hypothecation agreement, the writ court cannot interfere and cancel the subsequent sale. The Court does not find any illegality or irregularity in the way the co-operative bank had proceeded.

Section 112 of the West Bengal Co-operative Societies Act, 2006 empowers the society (bank) to sell the mortgaged property and deliver possession of the same to the subsequent purchaser.

The petitioner was all along aware of the default. Notices were issued to him. The vehicle was repossessed in his presence. The decision to sell the vehicle by public auction, was taken and notified in the newspaper. The petitioner did not respond. Instead, the petitioner filed two suits, which were dismissed as the petitioner failed to take steps. The petitioner is a signatory in the hypothecation agreement and had entered into a contract with the bank. The terms and conditions of the said contract are binding on the parties. Clause 19 is a part of the contract.

Under such circumstances, the writ petition is disposed of without any orders.

The observations made in this order are restricted to the disposal of this writ petition.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)