

14.06.2022
Ct. 5
D/L 34
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WPA 20922 of 2021

Radhe Shyam Mondal

-Vs-

LIC Housing Finance Limited & Ors.

Mr. Swarup Banerjee,
Mr. H. C. Yadav,

... for the petitioner

Mr. Ujjwal Kr. Sarkar,

... for the respondent nos. 1 and 2

Mr. Sajal Kr. Ghosh,
Mr. Manoj Chakraborty,

... for the respondent nos. 3, 4 and 5

The undisputed facts in the present case are as follows.

First, the petitioner filed the present writ petition on 20th December, 2021 for cancelling the demand notice dated 25th October, 2021 issued by LIC Housing Finance Limited under Section 13(2) of the SARFAESI Act, 2002. The notice is in relation to an outstanding amount of Rs. 3.30 crores taken by one M/S K.D. Developers. The petitioner thereafter filed an application under Section 17 of SARFAESI Act, 2002 before the D.R.T. The case status document shows that the application was filed by the petitioner on 25th February, 2022.

Learned counsel appearing for the petitioner submits that the petitioner is also aggrieved by the notice of possession dated 13th January, 2022 issued by the respondent and that the petitioner faces imminent danger of being dispossessed. Counsel submits that the petitioner is entitled to have its grievances redressed by the writ court despite pending proceedings before the D.R.T., Kolkata on the strength of certain decisions of the Supreme Court.

Learned counsel appearing for the respondents submits that the D.R.T. proceedings are continuing and the next date of hearing has been fixed in September, 2022.

After hearing learned counsel, this Court is of the view that since the petitioner has invoked the jurisdiction of D.R.T. under the relevant provision of 2002 Act, the petitioner cannot maintain proceedings in two different forums for the same relief. Admittedly, the petitioner has prayed for the same relief namely, setting aside and cancellation of demand notice dated 25th October, 2021 also before the D.R.T.

Whirlpool Corporation -vs- Registrar of Trade Marks : (1998) 8 SCC 1, propounded three instances where a prayer for alternative remedy would not lie; these are infraction of a fundamental right, breach of the principles of natural justice and where the order was passed without jurisdiction.

In Arunima Baruah –vs- Union of India : (2007) 6 SCC 120, the Supreme Court dealt with the impact of suppression on the part of the petitioner before the writ court for refusing discretionary relief. In the present case, the petitioner alleges suppression on the part of the LIC Housing Finance who is the respondent before the Court. Hence, this case is not applicable in the present facts.

In S.P. Chengalvaraya Naidu –vs- Jagannath; (1994) 1 SCC 1, the Supreme Court dealt with the impact of concealment of material facts and withholding of vital documents by a litigant for gaining advantage over other parties. In that case, the respondent before the Supreme Court was found to have obtained the preliminary decree by playing fraud on the Court. The Supreme Court hence held that non-production of relevant release deed at the trial amounted to playing fraud on the Court.

In the present case, the petitioner has not been able to establish a case where the respondents have played fraud on the Court calling for unravelling of previous acts. Most significant, the petitioner has already approached the D.R.T., which is the designated and appropriate forum under the 2002 Act and hence cannot now seek adjudication of the same relief before this Court. The apprehension that the D.R.T. will take three years to come to a final conclusion is speculative.

Further the notice of possession was issued on 13th January, 2022 before the petitioner approached the D.R.T. on 25th February, 2022. Hence, nothing prevented the petitioner from filing appropriate proceeding for cancelling the notice of possession. The petitioner having taken none of the aforesaid steps cannot seek to maintain the present petition particularly when the D.R.T. is available and functioning and the next date has been fixed in September, 2022.

WPA 20922 of 2021 is accordingly dismissed without any order as to costs.

Interim orders, if any, stand vacated and all connected applications, if any, are disposed of.

(Moushumi Bhattacharya, J.)