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AKG 03-02-2022
Ct.21

C.O. 49 of 2022
With
C.O. 2305 of 2021
With
C.O. 2306 of 2021
With
C.O. 2307 of 2021

Nilanjana Fashions Pvt. Ltd. & Anr.
Versus
Kotak Mahindra Bank

(VIA VIDEO CONFERENCE)

Mr. Radheshyam Tiwari,
Mr. Prantik Garai
...for the Petitioners

Learned advocate appears for the petitioner.
Learned advocate for the petitioner files affidavit of service showing due service on the opposite party Kotak Mahindra. But none appears from the side of bank. Revisional Applications are taken up for hearing.

It has been contended by learned advocate for the petitioner that petitioner had taken commercial loan from the opposite party/bank. Due to demonetization, the business of the petitioner was badly affected and as such, it could not pay the loan amount. There was outstanding due of Rs. 12,11,00,000/- on 17.03.2017.

A settlement was arrived at between the parties and it was agreed that the bank will take over current assets including stock, book debts etc., all movable and immovable fixed assets in the name of borrower company and co-lateral securities, such as, commercial

property including two car parking space measuring about 2798 Sft. situated at Sreelekha Apartment, 42A, Park Street, 6th Floor, Kolkata – 700016, commercial property located at 26A, Park Lane and three Warehouse Property located at Sankrail, Howrah.

In view of such settlement, the bank had already taken possession of the stock i.e. 3187 piece of saree and 107 piece of lehenga lying in the show-room of the petitioner situated at Sreelekha Apartment, 42A, Park Street, 6th Floor, Kolkata – 700016 on 4th April, 2018. The bank also took possession of the above commercial property, measuring about 2798 Sft. including two open car parking space on 04/04/2018. Petitioners thereby discharged their liabilities against the disputed loan/- but surprisingly, the bank has initiated recovery proceeding against them before D.R.T., Kolkata.

Learned advocate for the petitioners draws attention of this Court to the e-mail sent by Sweta Somani @ Kotak dated 21st March, 2017 sent on 10.21 hrs., letter dated 4th April, 2018 of the petitioners addressed to the authority of the opposite party bank, inventory of sarees and lehengas numbering 3294 pieces and Panchanama of taking possession of its property situated at Sreelekha Apartment, 6th Floor, 42A, Park Street, Kolkata – 700016, measuring about 2798 Sft. Therefore, he submits that Kotak Mahindra Bank has no locus standi to go before the D.R.T. under

Section 19 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 consequently the impugned orders passed by the learned D.R.T. including appointment of Receiver to take possession of the stock of the show-room situated at 42A, Park Street, Kolkata – 700016 which they have already taken on the strength of inventory on 4th April, 2018 is totally illegal. Here, I would like to mention that the inventory is a list of item such as goods in stock and it is not a document of taking possession. Similarly, panchanama is also a document having legal bearing which records evidence and findings that an officer makes at the scene. So, here I find that the bank has not taken over possession of the stock and the property as contended by the learned advocate for the petitioners. Therefore, the question of full satisfaction of the outstanding due amounting to about 13 crores by the petitioner does not arise.

It has been contended by learned advocate that he brought to the notice of the D.R.T. when the matter was taken up for hearing, but learned D.R.T. failed to take into consideration, his submission and passed the impugned orders and failed to mention his such submission in the impugned orders.

Perused the impugned orders and the same are silent about the panchanama and inventory and also about the alleged submission made by learned

advocate. Therefore, without entering into the merit of the impugned orders, the matter is remanded back to the learned D.R.T., Kolkata to see whether the bank had indeed taken possession of the stock inventory of which was prepared and the property situated at 42A, Park Street, Kolkata – 700016 panchanama of which was prepared by its concerned authorities and to reconsider the decisions/orders that have been passed in application under Section 17 of the SARFAESI Act, 2002 filed by the petitioners and in O.A. 105 of 2018.

Accordingly, C.O. 49 of 2022, C.O. 2305 of 2021, C.O. 2306 of 2021 and C.O. 2307 of 2021 are disposed of.

Connected applications, if any, are disposed of. Interim orders, if any, stand discharged.

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.)