05.12.2022
Item No.6
Ct. No.7
CHC
(disposed of)

C.O.3387 of 2022

Sk. Kayas
Vs.
Sujata Ghosh & ors.

Mr. Amit Ranjan Pati,
Ms. Reshmi Mukherjee
...for the petitioner

Mr. Krishna Kishore Ganguly
...for the o.p. nos.1 to 4

Mr. Jaydip Kar, Senior Advocate
Mr. Aritra Basu,
Mr. Abhijit Sarkar
...for the opposite party no.5
West Bengal Financial Corporation

The appellate decision passed in Misc. Appeal No.162 of 2022 by learned District Judge, Paschim Medinipur, dismissing the appeal and there-by affirming the order of the trial court, passed in Title Suit No.348 of 2022, vacating the injunction order, is under challenge in this case.

Admittedly, petitioner filed a suit before the court below claiming himself to be investor of money in the hotel business, run by defendant nos.1 to 4, and an order of ad interim injunction was granted by the trial court against the defendants, which was challenged by the defendant no.5, being West Bengal Financial

Corporation, Barasat upon filing an application under Order 39, Rule 4 C.P.C. Both the injunction application and the application under Order 39 Rule 4 C.P.C. were heard together, and injunction was thereafter refused thereby allowing the petition under Order 39 Rule 4 C.P.C. Such order was carried in appeal, which was dismissed in Misc. Appeal No.162 of 2022.

Mr. Amit Ranjan Pati, learned advocate appearing for the petitioner, upon adverting to a sale notice, issued by opposite party no.5, being West Bengal Financial Corporation, dated 28th April, 2022, submits that in the event of sale being allowed to be conducted for the assets of hotel, being run and managed by opposite party nos.1 to 4, the petitioner will remain unprotected in spite of a *bona fide* investor, as per agreement executed between the petitioner/plaintiff and the opposite party no.4 to run the hotel business by the opposite party nos.1 to 4.

It is thus submitted that unless some protection is given, the assets of the hotel business, run by opposite party no.1 to 4 may be sold causing petitioner/plaintiff to suffer irreparable loss.

Mr. Kar, learned Senior Advocate appearing for the opposite party no.5 submits that the title deeds, while obtaining loan, have already been deposited with the West Bengal Financial Corporation by the opposite party nos.1 to 4 upon mortgaging the same, and when the opposite party nos.1 to 4 failed to repay the amount, taken as loan, opposite party no.5 has already taken steps adhering to the provisions available under Section 29 of the State Financial Corporation Act, 1951, to take over the management or possession of the assets in respect of the hotel business run by opposite party no.1 to 4 for recovering the unpaid money.

Mr. Kar further draws attention of Section 7 of West Bengal Land Reforms Act, 1955 to submit that there cannot be any mortgage by deposit of title deeds in respect of the schedule property by reason of the express prohibition contained in Section 7 of the West Bengal Land Reforms Act, 1955, by any person, other than the categories mentioned therein.

The title deeds, according to Mr. Kar is lying with West Bengal Financial Corporation, since the day of obtaining loan by the opposite party nos.1 to 4, that is date of creation of agreement dated 16th February, 2010.

It is also contended by Mr. Kar that a separate writ application being W.P.A.4991 of 2022 has been filed by the opposite party no.s1 to 4 to challenge the auction sale, already undertaken by the opposite party no.5 to recover the unpaid money. Such writ petition according to Mr. Kar is also pending.

It is thus submitted by Mr. Kar that when there has been concurrent findings reached by the court below, while making rejection of the prayer for injunction, such order being a product of lawful exercise of discretion, must remain unaltered with.

Opposite party nos.1 to 4 submits that talk of settlement is going on between the parties irrespective of the pendency of the writ application preferred hereinabove.

According to opposite party nos. 1 to 4, they have put their sincerest effort to repay the money to the extent possible.

Having considered the submission of both sides, it appears that petitioner/plaintiff has assailed the appellate decision, simply on the ground of protecting his own interest.

Admittedly, the loan was borrowed by opposite party nos.1 to 4 upon depositing title deeds with opposite party no.5 being West Bengal Financial Corporation so as to mortgage the property by deposit of title deeds.

It is further case of the opposite parties that the money taken as loan till date has not been fully satisfied to West Bengal Financial Corporation.

The talk of settlement, if allowed to be proceeded in an endless manner, the statutory exercise undertaken by the opposite party no.5 under Section 29 of State

Financial Corporation Act, 1951, may be rendered a futile exercise.

Upon perusal of the impugned order, it appears that when there is no express perversity manifest in the order itself, revealing an error of justice, or abuse of the process of the court, or grave injustice or gross failure of justice has been there, interference by this Court under Article 227 of the Constitution of India is not justified.

More so, when a writ application as mentioned hereinabove, is pending to challenge the auction sale, this Court is of the view, that there may be chances of coming conflicting decision to come, and as such, the same is not at all encouraged by this Court.

There is hardly any scope for interference by this Court.

Regarding the proposed protection of investment of money, as alleged by the petitioner/plaintiff, the money if any given, as loan to the opposite party nos.1 to 4, may be recovered by petitioner/plaintiff undertaking appropriate proceedings in accordance with law.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)