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26-07-2022
debajyoti
(Ct. no.06)

FMA 60 of 2022
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IA NO:CAN/1/2020 (Old No:CAN/2441/2020)

Raichand Giri & Anr.
Vs.
State of West Bengal & Ors.

Mr. Syamal Kumar Das,
Mr. Ajay Barman Roy,
Ms. Smita Pal,
Ms. Krishna Yadav

... For the Appellants.

Mr. Pradip Kumar Roy,
Mr. Joydeep Roy

... For the State.

Mr. Madan Mohan Roy

... For Respondent Nos.4, 5 & 6.

By consent of the parties, the appeal and the application are taken up together for hearing.

An order dated December 09, 2019 whereby W.P.21938(W) of 2019 was disposed of, is under challenge in the present appeal. By the order impugned, the learned Judge held that the injunction order passed by the Civil Court in Suit No.338 of 2015 pending before the learned 2nd Court, Civil Judge, Senior Division, Contai, is without jurisdiction, void and shall be treated as non-est. The Cooperative Society has been granted liberty to proceed in accordance with law for sale of the mortgaged property after fresh advertisement.

It appears that the respondent no.8 took loans from the respondent Cooperative Bank. The respondent no.9, being the father of the respondent no.8, was the guarantor in respect of such loan.

Upon the respondent nos.8 and 9 failing to repay the loan or a substantial portion thereof, the Cooperative Bank issued notice for sale of the mortgaged property. Contending that such property was a joint property and they were joint owners, the writ petitioners approached the learned Single Judge challenging the sale notice. The learned Single Judge dismissed the writ petition as recorded above. Being aggrieved, the writ petitioners are before us by way of this appeal.

We have heard learned counsel for the parties. It is not in dispute that a partition suit is pending before the learned 2nd Court, Civil Judge, Senior Division, Contai, at the instance of the writ petitioners. The defendants in the suit are, amongst other persons, the respondent nos.8 and 9 as also the respondent Cooperative Bank. We have seen the schedule to the plaint of the suit. We have also seen the sale notice that was published by the Cooperative Bank and that was challenged before the learned Single Judge. From the particulars of the properties mentioned in those two documents, although it is not totally clear to us, yet it is possible that the property that the Bank is trying to put up for sale is the same or overlap to some extent with the property that is the subject matter of the partition suit. It is not in dispute that the property which is the subject matter of the partition suit is undivided. The co-owners do not have any physically demarcated portions of the property under their respective controls. We are of the view that the Cooperative Bank, which is a party to the suit, should have the matter clarified before the learned Civil Court so that property of no other party is put up for sale. The Bank is obviously within its rights to recover its dues by selling the mortgaged property in accordance with law. However, since the present appellants contend that the property that is being sought to be sold is co-

owned by them, this issue has to be sorted out before the learned Civil Judge before the Bank proceeds to sell the property in question. Not for a moment we are suggesting that the Bank is not entitled to sell its security in accordance with law. However, before taking steps for doing so, the Bank should also have it clarified by the learned Civil Court that the property, that is sought to be sold by the Bank, belongs exclusively to its debtor, is demarcated land and does not belong to the appellants herein to any extent.

We have noticed that the learned Single Judge has referred to Section 102(4) and Section 145 of the West Bengal Cooperative Societies Act, 2006. Section 102(4) of the 2006 Act refers to sub-section (1) of the said Act. Sub-sections (1) and (4) of Section 102 are set out hereunder:

“ 102. Disputes to be filed before Registrar. –

(1) Any dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election in a Co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises-

- (a) among members, past members and persons claiming through members and deceased members or their sureties; or
- (b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative society, its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or
- (c) between the Co-operative society or its board and any past board, any

officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the Co-operative society; or

- (d) between two Co-operative society or between a Co-operative society and a liquidator of another Co-operative or between liquidator of two different Co-operative or between a Co-operative society and any person having transaction with it or between a Co-operative society and its financing bank.

(4) Any Civil court or any consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1) ”

Section 145 of the 2006 Act reads as follows:

“ 145. Indemnity and bar to jurisdiction of Courts.-(1) No suit, prosecution or other legal proceedings shall lie against the Registrar or any person authorised by him or against a board of directors in respect of anything done or purported to be done in good faith under this Act.

(2) Save as provided in this Act, no Civil Court or Revenue Court or Consumer Disputes Redressal Forum shall have jurisdiction in regard to anything done or any action taken or any order passed under this Act and, in particular, in regard to-

(a) the registration of a Co-operative society or its by-laws or any amendment of its by-laws; or

(b) the dissolution of the board or a Co-operative society and the management of such Co-operative society on such dissolution; or

(c) any matter concerned with dissolution or liquidation of a Co-operative society;

(d) any dispute required to be referred to the Registrar under section 102.

(3) While a Co-operative society is being dissolved, nosui9t or other legal

proceeding relating to the affairs of such Co-operative society shall be proceeded with or instituted against the liquidator, or such Co-operative society or any member thereof except by leave of the Registrar and subject to such condition as the Registrar may impose.

(4) Save as provided in this Act, no order decision or award made under this Act shall be challenged, set aside, modified, revised or declared void in any court on any ground whatsoever except for want of jurisdiction. ”

The said provisions, in our opinion, do not have any manner of application in the present case. There is no dispute concerning the management or business or affairs of a Cooperative Society in the present case. The bar under Section 145(2) of the Act is also not attracted. The appellants in reality have no dispute with the Cooperative Bank. They are not saying that the Bank is not entitled to recover its dues. All that they are saying is that the Bank cannot sell a property of which they are co-owners. As indicated above, let the learned Civil Court sort out this issue. Given that public money is involved, we request the learned Civil Court before which the partition suit is pending, to decide this issue expeditiously on an application being made by the Cooperative Bank. If such an application is made, we request the learned Civil Court to dispose of the same in accordance with law within six months from the date of filing of the application without granting unnecessary adjournments.

The order of the learned Single Judge is set aside. The Bank shall not proceed against the property in question till the learned Civil Court decides the issue, as indicated above.

With the above observations, the appeal and the connected application are disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.) (Arijit Banerjee, J.)