

APOT/121/2022
IA NO. GA/1/2022
GA/2/2022
WPO/2166/2022
IN THE HIGH COURT AT CALCUTTA
JURISDICTION
ORIGINAL SIDE

STATE BANK OF INDIA & ANR.
VERSUS
AVLOKAN COMMOSALES PRIVATE LIMITED & ANR.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 26TH AUGUST 2022

APPEARANCE:

Mr. Joy Saha, Sr. Advocate
Mr. Somnath Mukherjee, Advocate
. . . . for the appellants.

Mr. Siddhartha Mitra, Sr. Advocate
Mr. Roibat Banerji, Advocate
Ms. Natasha Roy, Advocate
. . . for writ petitioners/respondents.

The Court:- This intra-court appeal is at the instance of the bank (respondent in the pending writ petition) challenging the interlocutory order of the learned Single Judge dated 17th May, 2022 passed in WPO 2166 of 2022 whereby a direction has been issued to the appellant bank to deposit a sum of Rs.55,19,250/- along with the interest with the Registrar, Original Side of this Court within a specified time. The appellant is also aggrieved with the subsequent order dated 15th June, 2022 whereby the application for review/modification being GA/1/2022 has been dismissed by the learned Single Judge.

The facts as has been pointed out to this Court in a nutshell are that the respondent/writ petitioner was the auction purchaser of the property in question and the auction had taken place on 02.8.2018 and full consideration amount was paid by the writ petitioner on 17th August, 2018. Meanwhile, on 07.8.2018 DRT

in SA 168 of 2018 had passed the order to the effect that no sale certificate be issued and no further steps be taken till the pendency of the SA. According to the writ petitioner, this order was conveyed subsequently. In spite of deposit of the full consideration amount on account of interlocutory order of the DRT, the sale certificate was not issued. The appellant/bank on 27.01.2020 had assigned the debt in question to Phoenix ACR Pvt. Ltd. On 01.3.2022, amicable settlement in the pending SA before the DRT was arrived at between the bank and the borrower and, therefore, the SA was disposed of. Subsequently on 28/29th March, 2022 the sale certificate has been issued in favour of the writ petitioner by Phoenix. The writ petitioner had approached the Court by filing the present petition with a prayer to refund the bid amount of Rs.55,19,250/- along with the interest. The learned Single Judge by order dated 17th May, 2022 had directed the appellant to deposit the said amount along with interest with the Registrar, Original Side of this Court and directed the Registrar to maintain the amount in the interest bearing account with automatic renewal.

Aggrieved with the same, the appellant had filed GA/1/2022 with twin prayers, firstly to modify the order dated 17th May, 2022 and secondly to implead Phoenix as party in the pending writ petition. The said GA/1/2022 has been dismissed by order dated 15th June, 2022.

Submission of the learned counsel for the appellant is that earlier in WPO/199/2021 the writ petitioner had taken the stand that either the money deposited be refunded or the sale certificate be issued and that the sale certificate was not brought to the notice of the learned Single Judge when the order impugned was passed. He has further submitted that the prayer for impleadment has been rejected by the learned Single Judge by order dated 15th June, 2022 and GA/1/2022 has been dismissed, therefore, this order is final in nature. It is also submitted that the debts have been assigned by the appellant to Phoenix, therefore, the appellant should not be asked to deposit the amount and that the writ petitioner cannot get the property and refund of the amount, both.

Learned counsel for the respondent/writ petitioner has opposed the appeal by submitting that the learned Single Judge while passing the interlocutory orders under challenge has exercised the discretion. Hence, in appeal scope of interference in exercise of discretion granting interim relief is very limited and that the writ petitioner had deposited the amount with the appellant-bank, therefore, appellant-bank should secure it and the full consideration amount was paid by the writ petitioner three years' back but the sale certificate was not issued at that time and with the changed circumstances the writ petitioner is not interested in the property but it wants refund of money.

Having heard the learned counsel for the parties and perusing the records, it is noticed that the writ petition yet to be decided by the learned Single Judge and all the contentions which have been raised before this Court can be gone into at the time of final adjudication of the writ petition.

So far as the interlocutory order dated 17th May, 2022 is concerned, the learned Single Judge has only secured the amount which was deposited by the writ petitioner in pursuant to auction sale. Subsequent application being GA/1/2022 has been dismissed as the learned Judge had reached to the conclusion that it was the application for review in the garb of the recall/modification application. The right of the appellant to file an appropriate application for impleadment of Phoenix is not closed because the learned Single Judge has refused to consider the second prayer made in GA/1/2022 for want of determination. Hence, the appellant is at liberty to file an appropriate application for impleadment of Phoenix before the concerned Bench having determination. The amount which has been directed to be deposited by the learned Single Judge in any case is subject to the final outcome of the pending writ petition. However, in the facts of the present case, the learned Single Judge was not justified in imposing the cost of Rs.11,000/- while dismissing GA/1/2022. Therefore, we set aside that part of the order imposing cost. Since the time granted by the learned Single Judge has expired, therefore, we extend the time granted by the learned

Single Judge to deposit the amount in question by a period of two weeks from today.

We find no reason to interfere in any other part of the order of the learned Single Judge. Hence, the appeal along with the connected applications are accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)