IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13333 Of 2022
(Through hybrid mode)

The BM, IDFC First Bank Ltd., Baripada Branch and others .... ***Petitioners***

Mr. Devi Prasad Tripathy, Advocate

-versus-

Permanent Lok Adalat, Mayurbhanj Baripada and another .... ***Opposite Parties***

Mr. Nilamadhab Praharaj, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
03.08.2022

Order No.

2.

1. Mr. Tripathy, learned advocate appears on behalf of the bank. It is petitioner having impugned award dated 21st April, 2022 passed by the Permanent Lok Adalat. He submits, opposite party no.2 had applied for loan. She had offered to mortgage her residential property. A processing fee was obtained by the bank for purpose of verification of the property, to be given as security for loan. The loan was not sanctioned, it being in the discretion of the bank. Opposite party no.2 went to the Permanent Lok Adalat (PLA) claiming return of original documents, refund of processing fees and cost. The PLA exceeded its jurisdiction and powers in directing the bank to return documents, pay Rs.50,000/- as compensation and Rs.5000/- as litigation expenses.

2. At this juncture it is to be said that the writ petition was moved on 27th June, 2022. Paragraph-2 from order made that day is reproduced below.

> "*2. On query from Court Mr. Tripathy points out, in sub-paragraph (e) of paragraph 5 there is clear statement that opposite party no.2 had deposited only photocopy of Record of Rights. On further query from Court Mr. Tripathy draws attention to valuation report dated 6th April, 2021 obtained by the bank. Entry 16 in the report are particulars of property documents verified. It clearly refers to sale deed dated 29th July, 2020. Verification implies, if copy was verified, it was with the original. Otherwise the original was seen and comment of verification reported.*"

3. On query made today Mr. Tripathy submits, banking procedure was followed regarding processing the application for loan of opposite party no.2. Copies of sale deed and Record of Right (RoR) were submitted by said opposite party. Original documents are taken at the time of sanction, for creation of mortgage by deposit of original title deeds.

4. Mr. Tripathy relies on **judgment dated 19th May, 2022** of the Supreme Court in **Civil Appeal no.3872 of 2022** (**Canara Bank v. G.S. Jayarama)** to submit, mandatory procedure followed for purpose of ensuring settlement in the PLA was not followed, thereby also vitiating impugned award.

5. Mr. Praharaj, learned advocate appears on behalf of opposite party no.2. He relies on pleadings filed in the PLA to submit, there cannot be any dispute on deposit of original documents by his client. He submits further, under section 22E(2) it is provided that every award of the PLA under the Act shall be deemed to be a decree of civil Court. As such the writ petition is not maintainable since petitioner, if aggrieved, has statutory remedy of appeal from decree before the civil Court.

6. The second submission of Mr. Praharaj regarding available statutory remedy of appeal from decree rendering the writ petition as cannot be maintained does not stand since, the Supreme Court in **Bhargavi Constructions v. Kothakapu Muthyam Reddy** reported in **(2018) 13 SCC 480** declared that article 227 in the Constitution may be resorted to by an aggrieved party before a PLA, for remedy.

7. Contention of petitioner regarding breach of mandatory procedure to arrive at settlement must be dealt with. In paragraph-26 (Live Law print) of **Canara Bank** (supra) the Supreme Court after having said that parties are to cooperate on good faith and assist the PLA, the latter, based on the materials before it, shall propose terms of settlement and communicate them to both parties, regardless of whether they participated in the proceedings. If the party present before the PLA does not agree or if the absent party does not respond in a sufficient period of time, only then can the PLA adjudicate the dispute on its merits under section 22-C(8). In this context paragraph-3 from impugned award is reproduced below.

> "*That, as per the requirements of the respondents, the applicant deposited all original documents pertaining to her land and building like, the R.O.R. Sale Deed, Rent receipts, E.C., previous R.O.R. and Sale Deed, Aadhar, Voter, Pan and Photographs etc with the respondent no.1, upon which the respondent no.1 verified all the documents and visited the property of the applicant, and being satisfied, asked the applicant to deposit a sum of Rs.5,500/- (Rupees Five thousand five hundred) only towards processing fees.) xx xx xx xx*"

Court is satisfied that the mandatory procedure declared as must be followed, was followed in this case and, to notice of petitioner there was no settlement. Petitioner had filed memo saying that the written statement filed on their behalf, being supported by affidavit, may be treated as their evidence. There is no doubt that petitioner proceeded for adjudication before the PLA after attempt at settlement had failed.

8. As was pointed out in aforesaid order dated 27th June, 2022, entry-16 in the valuation report, particulars of property documents were verified. It clearly refers to sale deed dated 22nd July 2022. Verification implies, if copy, then it was verified with the original. Otherwise the original was seen and comments made in the report. In this context, following extract from paragraph-3 in the petition of opposite party no.2, filed in the PLA, is reproduced below.

> "3. *That, as per the requirements of the respondents, the applicant deposited* ***all original documents pertaining to her land and building like, the R.O.R. Sale Deed,*** *Rent receipts, E.C., previous R.O.R. and Sale Deed, Aadhar, Voter, Pan and Photographs etc with the respondent no.1, upon which the respondent no.1 verified all the documents and visited the property of the applicant, and being satisfied, asked the applicant to deposit a sum of Rs.5,500/- (Rupees Five thousand five hundred) only towards processing fees)..............................*"
>
> (emphasis supplied)

Written version filed in the PLA by petitioner dealt with above quoted averments in paragraph-6 thereof, reproduced below.

> "*6. That, the averments made in para no.3 is partly denied and objected by the Respondents.* ***The Applicant had submitted the relevant documents for valuation of the property*** *and as per the Banking Norms the Applicant had deposited Rs.5500/- towards the Valuation and Processing fees. The said Documents were submitted and accordingly on 05/04/2021 an Official Valuer was appointed for valuation of Land and House. The Learned Valuer after valuation of the Land submitted that the Market value of the said property was Rs.5,08,740/-. It is respectfully submitted that the Respondents have never deferred the Sanction of the Loan.*
>
> (emphasis supplied)

Mr. Tripathy points out that thereafter by last sentence in paragraph-7 his client had said that though it had received the notice, it could not act upon it as there was no original paper/document submitted.

9. Statements in the written version stood supported by affidavit, wherein simply it was said that facts in the written statement are correct and true, basing on official records available with the company. Where opposite party no.2 had specifically averred deposit of original documents with particulars and response in the written version was that she had submitted the relevant documents for valuation of the property and as per banking amounts she has deposited Rs.5,500/- towards valuation and processing fees, there appears thereby, clear admission by petitioner. In the circumstances, there is no reason to interfere with impugned award on adjudication and directions made by the PLA therein.

10. The writ petition is found to be without merit and the same is dismissed.

(Arindam Sinha)
Judge

Sks