AD-15
Ct No.09
24.07.2023
TN

WPA No. 1097 of 2023

Tarkeswar Prasad Gupta and others
Vs.
The Union of India and others

Mr. Rajdip Roy,
Mr. Sandip Roy,
Mr. Shivam Adhikary,
Mr. Arghya Mullick

.... for the petitioners

Ms. Ameena Kabir

.... for the respondent nos. 3, 4 & 5

Learned counsel for the petitioners submits that the petitioners were successful in an auction sale held by the respondent-Bank. The sale certificate was also issued to the petitioners, which is annexed to the present writ petition. Subsequently, however, till date no possession of the secured assets has been handed over to the petitioners pursuant to the sale certificate. Hence, the petitioners seek immediate possession, alternatively, a refund of the amount deposited by the petitioners by way of earnest money/consideration.

Learned counsel appearing for the respondent-Bank submits that the respondent-Bank duly took out a proceeding under Section 14 of the SARFAESI Act, 2002 (for short "the 2002 Act"). The respondent-Bank also obtained possession of the immovable property.

However, since the borrower was not removing the movables but challenged the said proceeding before the Debts Recovery Tribunal by way of filing an application and obtained an order of *status quo*, the bank's hands were tied since then.

It is further contended that the petitioners have, in the meantime, been impleaded as parties to the application filed by the borrower, where the *status quo* order has been passed by the Debts Recovery Tribunal. Hence, it is argued that the relief of the petitioners lies before the Debts Recovery Tribunal.

In reply, learned counsel for the petitioners insists that the petitioners have already been waiting for more than one year after the sale certificate was issued and, as such, do not want to block their money further and seek a refund.

Upon consideration of the materials annexed to the writ petition and the arguments of the parties, as well as an unreported judgment of this court dated June 13, 2023 passed in *WPO 577 of 2023 (Ashu Dhar vs. The Assistant General Manager, UCO Bank and anr.)*, it is seen that the respondent-bank is justified in raising the question of maintainability of the writ petition.

Insofar as the judgment, which has been cited by the petitioners, is concerned, the same recorded in the circumstances of the said case, that the petitioners had purchased the property therein on April 06, 2020; however, the physical possession of the property was not handed over till the date of passing the order by the court on June 13, 2023, that is, more than four years thereafter. In such circumstances, it was observed that there was no justified reason for the bank not to compensate the petitioner by refunding the principal amount taken by the bank, along with interest in view of the delay of more than four years.

However, it is not clear from the said judgment that a ratio of law was laid down therein. The observations of this court in the said matter, which has been cited by the petitioners, were in the context of the factual premise of the same and do not lay down a blanket ratio or proposition of law.

Insofar as the present case is concerned, the petitioners were awarded the sale certificate on May 19, 2022. The bank cannot be said to have sat tight over the matter, since an application under Section 14 of the 2002 Act was duly filed by the bank for obtaining possession.

Subsequently, the bank also took possession of the immovable property but, due to an order of *status quo* obtained by the borrower from the Debts Recovery

Tribunal, the bank's hands were tied in regard to the handing over of possession of the property to the petitioner.

Hence, it cannot be said in the present case that any fault can be attributed to the bank, by making it liable for refunding the amount of consideration paid by the petitioners, with or without interest, at least till now. Since the petitioners have already been impleaded before the tribunal in the proceeding where the borrower has obtained a *status quo* order, it would only be proper if the petitioners approach the tribunal for an appropriate order from the said forum.

Accordingly, WPA No. 1097 of 2023 is disposed of with liberty to the petitioners to approach the concerned tribunal, either in the proceeding filed by the borrower or in any independent proceeding, urging the points as raised herein. If so approached, the tribunal shall decide all questions involved, without being influenced unduly by any of the observations made herein.

It is expected that the tribunal shall decide the application of the petitioners, if so filed, as expeditiously as possible, preferably within two months from the date of filing of such application.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)