11.12.2023
Item No.8
PG/KS
Ct. No.1

M.A.T. 106 of 2023
With
IA No. CAN 1 of 2023
+
CAN 3 of 2023

The Central Bank of India & Anr.
Vs.
The State of West Bengal & Ors.
With
APOT 24 of 2023
The Central Bank of India & Anr.
Vs.
Ku Chih Choi & Ors.

Mr. A.K. Routh
Mr. Sudeep Pal Chaudhuri
Ms. Diya Nandi
Ms. Ananya Mondal
Mr. Subhayan Barik
.... For the Appellants
Mr. Suman Sengupta
Ms. Amrita Panja Moulick
.....For the State (APOT 24 of 2023)
Mr. Wasim Ahmed
Sk. Md. Masud
.....For the State
Mr. Sudip Deb
Mr. Riju Ghosh
Mr. Sumitava Chakraborty
Mr. Aranyak Saha
Ms. Ipsita Ghosh........For the respondent no. 4 in MAT 106 of 2023 & for the respondent no. 1 in APOT 24 of 2023

In Re: IA No.CAN 3 of 2023

1. With the consent of the parties, this application is taken up for hearing by treating the same as on day's list. This is an application for expeditious hearing of these appeals. Upon going through the averments made therein and upon hearing the

submissions of the learned advocates for the parties, we are satisfied that the appeals are to be decided expeditiously. Accordingly, we take up the hearing of these appeals.

2. The application being, I.A. No. CAN 3 of 2023 stands disposed of.
3. These appeals M.A.T. 106 of 2023 and APOT 24 of 2023 are at the instance of the Central Bank of India and its Chief Manager challenging the judgment and order dated January 19, 2023 passed in W.P.O. 2186 of 2022 heard analogously with W.P.A. 15802 of 2022. The respondent no.4 in MAT 106 of 2023 filed the writ petition being, W.P.O. 2186 of 2022 praying for issuance of a writ of mandamus directing the authorities of the Central Bank of India to act in terms of the sale certificate dated September 29, 2014 by handing over the actual physical possession of the property situated at L.O.P. No.46 in R.S. No.404/1469(P) at Mouza – Behala under jurisdictional List No.2 within Parnashree Police Station and alternatively to pay off the entire money along with interest.
4. The Central Bank of India i.e. the appellants filed a writ petition being, W.P.A. 15802 of 2022 praying for issuance of a mandamus directing the concerned District Magistrate to hand over possession of the property to the bank under Section 14 of the

Securitisation of Financial Assets and Enforcement of Security Interests Act, 2002 (for short, "SARFAESI Act"). The respondent no.4 herein became the successful auction purchaser of a sale conducted by the Central Bank of India pursuant to a paper publication made by the bank on May 25, 2014. The total consideration money indicated in the auction sale notice was Rs.35,00,000/-. The 4th respondent initially paid 25% of the total consideration money and subsequently paid the entire balance amount.

5. By a communication dated July 3, 2014, the Bank informed that the respondent no.4/writ petitioner was declared as the successful auction purchaser and the sale certificate was issued in favour of the said respondent on September 29, 2014.

6. Since the 4th respondent could not get physical possession of the property, which was the subject-matter of the auction sale even though the sale certificate was issued in his favour, the said respondent was compelled to approach this Court by filing a writ petition.

7. Mr. Deb, learned advocate appearing for the respondent no.4 draws the attention of this Court to the auction sale notice, wherefrom it appears that it was specifically stated that the bank through its authorized officer took possession of the mortgaged

property under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002. He further refers to the said Rules and submits that the authorized officer of the bank while putting up the property on auction sale, was duty-bound to disclose the entire description of the immovable property, which was put up for auction sale including the details of the encumbrances known to the secured creditor.

8. Mr. Deb, learned advocate further submits that though the Bank was fully aware that the property was in possession of a third party, yet the bank did not disclose such fact in the auction sale notice.

9. Mr. Pal Choudhury, learned advocate appearing for the bank submits that the sale was on "AS IS WHERE IS BASIS" and "AS IS WHAT IS BASIS" and "WHATEVER THERE IS BASIS" and "WITHOUT RECOURSE BASIS".

10. He further submits that the respondent no.4 herein before participating in the auction sale, ought to have inspected the property so as to be aware of any encumbrances in respect of such property.

11. Heard the learned advocates for the parties and perused the materials placed.

12. The learned Single Bench after noting the reliefs claimed by the Bank in its writ petition rightly observed that it is clear that the bank was not in actual possession of the property, which was sold to

the respondent no.4 herein against the valuable consideration. The assertion of the bank in the Auction Sale notice that it is in possession of the property and such property is free from encumbrances undoubtedly amounts to a clear act of misrepresentation as contemplated under Section 18 of the Indian Contract Act, which includes a positive assertion in a manner not warranted by the information available to the person making such assertion even if the person believes it to be true.

13. Clause (a) of Rule 8(7) of the 2002 Rules mandates that the authorised officer shall upload in the official website of the Bank the terms and conditions of sale including the description of the immovable property to be sold including the details of the encumbrances known to the secured creditor. Clause (f) of Rule 8(7) obliges the authorised officer to disclose such terms and conditions, which will enable the purchaser to know the nature and value of the property.

14. The fact that the property was in the possession of the third party at the relevant point of time is undoubtedly a burden on the property and such fact is also relevant to enable the purchaser to know about the nature and value of the property.

15. The provision laid down in Rule 8(7) being a mandatory provision, the Bank cannot be permitted

to take a defence that such sale being on "as is where is basis" and so on, the Bank was justified in not complying with the aforesaid mandate of 2002 Rules.

16. Mr. Pal Chowdhury would submit that the concerned District Magistrate may be directed to hand over possession of the property, which was purchased by the respondent no.4 through auction sale. Such contention cannot be accepted as the property was put up for auction sale by the Authorised Officer of the Bank without disclosing the encumbrances, which amounts to an act of misrepresentation as observed hereinbefore.

17. The learned Single Bench noted that the bank after taking Rs.35,00,000/- in September, 2014 appropriated the same. The learned Single Judge was right in directing the Bank to deposit the said sum along with 10% interest with the Registrar, Original Side of this Court. The learned Single Bench further observed that the concerned District Magistrate also failed to ensure the delivery of possession of the secured asset to the bank. This Court is, therefore, of the considered view that the learned Single Bench after taking into account the plight of an auction purchaser, who was deprived of the consideration money for eight long years as the property for which he paid the consideration money

long time back was right in holding that the respondent no.4 herein is entitled to refund of the money, which was directed to be deposited with the Registrar, Original Side.

18. In view thereof, we do not find any reason to interfere with the impugned judgment and order passed by the learned Single Bench.

19. The appeals accordingly fail and the same are dismissed along with the connected application.

20. Since the amount in terms of the direction passed by this Court is lying with the learned Registrar, Original Side and the same has already been invested with the nationalized bank, the learned Registrar, Original Side is directed to take steps for payment of the said amount, which is lying in deposit together with interests accrued thereon till date, as expeditiously as possible, but, positively on or before December 22, 2023. Such payment is to be made by an account payee cheque/draft drawn in favour of respondent no.4/Ku Chih Choi.

21. No costs.

22. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)