Item No. 4
07.07.2023
Court. No. 19
GB/srm

C.O. 243 of 2022
With
CAN 1 of 2022

Ayeshbag Samabay Krishi Unnoyon Somiti Ltd.
Vs.
Murshidabad District Central Cooperative Bank Ltd.

Mr. Arijit Bardhan,
Mr. Steven Sourodip Biswas
... for the Petitioner.

Mr. Debjit Mukherjee,
Mr. Saikat Chatterjee,
Mr. Puranjan Pal
... for the Opposite Party.

The Court is satisfied with the proposition of law that an award debtor must secure a substantial amount payable to the bank on account of a loan which was not repaid.

Challenging an award passed by the Assistant Registrar of Cooperative Societies, the petitioner filed a writ petition and was unsuccessful in obtaining any order of stay.

The said order was challenged before an Hon'ble Division Bench. The petitioner was also not favoured with any order.

The petitioner has now challenged an order of the certificate officer by filing this revisional application. It is stated that the certificate officer has the trappings of a civil court and thus, amenable to the jurisdiction of the High Court under Article 227 of the Constitution of India.

Mr. Bardhan, learned advocate appearing on behalf of the petitioner submits that the opposite party, namely, Mushidabad District Central Cooperative Bank Limited did not have any legal sanction to proceed for execution of the award by involving Section 10 of the Bengal Public Demands Recovery Act, 1913. According to Mr. Bardhan, the said proceeding was not in accordance with law. Mr. Bardhan submits that the West Bengal Cooperative Societies Act, 2006 provides a special mechanism by which an award passed under Section 139 can be executed. Hence, Mr. Bardhan prays that the order of the certificate officer passed under the Bengal Public Demands Recovery Act, 1913 for attachment of the mortgaged landed property and for sale of the same, should be set aside by this Court as no certificate in the prescribed form had been issued.

A further submission is made that although there are admitted dues in favour of the Mushidabad District Central Cooperative Bank Limited, the requisitor, the petitioner bank is not in a position to pay up the loans as they are facing financial crunch. The borrowers who have been loaned money by the petitioner have not repaid the same. As a result of which, such financial stringency has occurred and there is no money to pay back the opposite party.

Mr. Mukherjee, learned advocate appearing on behalf of the Mushidabad District Central Cooperative Bank Limited, opposes Mr. Bardhan’s submissions and submits that huge amount is outstanding from the petitioner. Rs.15,00,00,000/- had been loaned to the petitioner, but the total outstanding amount, with interest, was over Rs.31,00,00,000/-. That not a single farthing had been paid by the borrowers and the Central Cooperative Bank Limited is also facing huge financial crisis. According to Mr.

Mukherjee, when the award was challenged before a writ Court and the petitioner failed to obtain any interim order even in the appeal, nothing further remains to be decided in this revisional application as the competent courts did not grant any stay, either of the execution or of the award.

Submission is made that in view of the financial crunch which the Central Cooperative Bank Limited is facing, the bank has become almost non-functional and even the employees are not being paid their salaries. It is prayed that the revisional application should be dismissed.

With the disposal of the certificate case, the Central Cooperative Bank Limited was entitled to sell the landed property which had been mortgaged by the petitioner so that the money recovered from the sale proceeds can be used to meet up the financial crisis faced by the Mushidabad District Central Cooperative Bank Limited. Payment of the salaries and the day to day expenses of the opposite party were the immediate concern.

Mr. Mukherjee further submits that as per Section 143 read with IInd Schedule of the West Bengal Co-operative Societies Act, 2006, the award can be executed and the dues can be recovered by the Murshidabad District Central Cooperative Bank as a public demand, under the provisions of the Bengal Public Demands Recovery Act, 1913.

Heard the learned Advocates for the respective parties. The petitioner admits that an amount of Rs.5,00,00,000/- is payable to the Central Cooperative Bank. Although the loan of Rs.15,00,00,000/- had been taken, some amounts had been repaid, it is urged. Mr. Mukherjee denies such claim and submits that such issue is already sub-judice in the writ petition.

This Court finds that the Bengal Public Demands Recovery Act, 1993 is applicable for execution of an award passed under Section 139 of the Act. Mr. Bardhan is not correct. The petitioner admits that a sum of Rs.5,00,00,000/- is due as on date. This Court is of the view that the final quantum payable by the petitioner will be subject to the final decision in the writ petition. As no interim order was passed, staying either the execution of the award or the award itself, the money has to be secured by the borrower.

As it is the specific contention of the petitioner that funds are not available, the property shall be sold by the opposite party as directed by the certificate officer. The sale proceeds shall be kept secured by the opposite party, after deducting Rs.5,00,00,000/- therefrom. The opposite party shall utilize the said amount to meet the daily expenses of the society. The base price shall be fixed at the approximate market value of the property. The procedure as per the law, shall be followed during such sale. The certificate officer shall be at liberty to comply with all the legal formalities.

The apprehension of Mr. Bardhan that the property shall be sold at a lower price than it would have fetched otherwise, if the sale was executed through an independent agency, does not impress this Court.

The Murshidabad District Central Cooperative bank shall proceed with the sale. The remaining sale proceeds upon deduction of Rs.5,00,00,000/-, shall be invested by the Murshidabad District Cooperative Bank in an interest bearing, short term, auto renewal fixed deposit. A report with regard to the method of sale, the quantum of sale proceeds recovered and the utilisation of the amount withdrawn, shall be filed before the Hon'ble writ Court. Prayer may also be made by the Central Cooperative Bank for withdrawal of reasonable amounts, after utilization of the Rs.5,00,00,000/-.

In my view, the allegations of non-compliance of the provisions of Sections 5 and 6 of the Bengal Public Demands Recovery Act, 1993 should be challenged in the writ petition itself.

Liberty is granted to the petitioner to take all points raised here, by approaching the Hon'ble writ Court, before which a matter arising out of the self-same award, is substantially in issue amongst the same parties.

Multiplicity of proceedings and/or parallel proceedings should be avoided. Conflicting decisions should also be avoided.

The petitioner shall state in details by way of an affidavit before the Hon'ble writ Court, the amount of loan which had been released in its favour and allegedly repaid by it. Entire accounts shall be furnished. As the Murshidabad District Central Cooperative Bank is suffering, the said bank shall have the liberty to take appropriate steps for hearing of the writ petition and file an affidavit with all information and the facts, thereby controverting the contentions of the petitioner.

The revisional application is disposed of.

With the disposal of the revisional application, the connected application, which has become infructuous, is disposed of accordingly.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)