In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side

S/L No. 80
13.03.2023
Ct-237
(RD)

C.O. 577 of 2023

Bivas De & Anr.
Vs.
H.D.F.C Bank & Ors.

Mr. Saptangsu Basu, Sr. Adv.
Mr. Kumar Jyoti Tewari, Adv.
Mr. Prantick Ghosh, Adv.
Mr. Siddhartha Sarkar, Adv.
Mr. Aniruddha Tewari, Adv.
Mr. Prasad Bhattacharya, Adv.

…. For the petitioner

Mr. Shamit Sanyal, Adv.
Mr. M. Kanji, Adv.
Mr. Sabyasachi Roy, Adv.

… For the respondent/
opposite parties No.1

The order dated 06.12.2019 passed by Presiding Officer, Debts Recovery Tribunal- 1 in connection with case no. OA/475 of 2019 as well as order dated 09.02.2023 passed by Hon'ble Chairperson, Debts Recovery Appellate Tribunal, Kolkata are challenged in this revision application.

Mr. Saptangsu Basu appearing on behalf of the petitioner has assailed the ex-parte order dated 06.12.2019 in connection with OA/475 of 2019 on the ground that the Learned Presiding Officer appointed joint receiver to inspect the vehicle and seized the vehicle after taking, if necessary, assistance of jurisdictional Police Station.

By referring to the Provision of Order 40 Rule 1 of Civil Procedure Code, Mr. Basu has submitted that appointment of receiver can be made when it appears to the Court to be just and convenient. Mr. Basu has further contended that nowhere in the application before the Debts Recovery Tribunal respondent assigned any reason in support of alienation of the mortgaged property and that apart Learned Debts Recovery Tribunal also did not assign any reason in the order dated 06.12.2019 in support of 'Just & convenient'. That order of Debts Recovery Tribunal passed on 06.12.2019 was also affirmed by the order dated 09.02.2023 by the Debts Recovery Appellate Tribunal, Kolkata on the sole ground as follows in paragraph 13"-

> ***" 13. Learned Tribunal had considered the submissions made by the Learned Counsel for appellant. An amount of Rs. 2,09,21,772.00 was outstanding as on 27th November, 2019. Vehicle Loan was sanctioned for purchase of twenty two Oil Tankers. After considering the factual aspects, Learned Tribunal passed the impugned order appointing Receivers. It is noteworthy that nowhere liability to pay the loan is challenged or denied rather as per the record vehicles are hired by the Respondent No. 2 and the Appellant enjoyed the fruits but the amount is not being paid. Accordingly, I do not find any illegality or impropriety in the impugned order. Learned Tribunal has passed the order strictly in accordance with law. Appeal lacks merit and is liable to be dismissed."***

Learned Advocate, Mr. Shamit Sanyal, appearing on behalf respondent/Bank has contended that respondent/opposite party filed application under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act , 1993 against the petitioner of this application for certificate of recovery of a sum of Rs. 2,09,21, 772.01P and interest up to 11.10. 2011 @ 85% per annum. Mr. Sanyal has submitted that the Ld. Tribunal passed an order of appointment of receiver to seize 22 vehicles to secure the loan amount and that was further affirmed by the Hon'ble Appellate Tribunal.

Hon'ble Debts Recovery Appellate Tribunal overlooked the lack of reason of apprehension of alienation in the order dated 06.12.2019 before appointment of joint receiver empowering them to seize the mortgage 'property with the assistance of Police.

The words 'just and convenient', in my opinion, envisaged in order 40 Rule 1 of the Civil Procedure Code does not necessarily mean that Tribunal has to assign reason before appointment of receiver. Here in this case huge amount of debts involved and that too for a considerable period. Such conduct of the borrower is sufficient to justify to pass an order for appointment of receiver with a view to secure the loan amount. That apart, petitioners/ defendants were directed to disclose their personal movable/ immovable assets, by the Tribunal.

In the aforesaid view of the matter, I am of the humble view that even in absence of any specific pleading of apprehension of alienation receiver can be appointed for seizure of the mortgage property to secure the loan amount of Rs. 2,09,21,772,01P and interest thereon.

On careful perusal of the order passed by the Hon'ble Appellate Tribunal, I do not find any reason to interfere with the impugned orders on the issue of recovery of debts due to Bank that too recovery of sum of Rs. 2,09,21,772,01P with interest up to 11.10.2011 @ 85% per annum.

With the aforesaid observation the revision application being no. Co No. 577 of 2023 stand disposed of. No order as to cost.

All parties are directed to act on a server copy of this order downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)