Item No. 463
27.07.2023
Court. No. 19
GB

C.O. 1419 of 2022
With
CAN 1 of 2022
With
CAN 3 of 2022
(Application not in file)
With
CAN 4 of 2023
(Application not in file)

Gora Dutta
Vs.
Punjab National Bank & Ors.

Mr. Shibaji Kumar Das
... for the Petitioner.
Mr. Abhishek Banerjee,
Mrs. Parna Roy Chowdhury,
Mr. Prithwiraj Patra
... for the Opposite Parties.

The revisional application was entertained by a coordinate Bench at a time when the appellate tribunal was not in seisin.

The petitioner is aggrieved by an order dated May 19, 2022. This order is an appealable order as the prayer for injunction had been declined.

It is submitted that the order was passed on the day when the High Court was closing for the summer vacation. The appellate tribunal was not functioning. Finding no other alternative, and in order to protect the property, a third party who was neither a borrower nor a guarantor, approached this Court and was favoured with an interim order.

The petitioner is the son of one of the partners of a partnership firm, which was the borrower. The borrower failed to repay the loan. The petitioner filed an application challenging the SARFAESI proceeding. The petitioner prayed for stay of auction of the mortgaged property. Such prayer was refused on the ground that the successful bidder had deposited 25% of the sale amount. The petitioner did not show any inclination to pay 25% of the sale amount although the bank had given him an opportunity to do so.

The revisional application was admitted by a coordinate Bench. Execution of the sale notice was directed to be stayed by an order dated June 2, 2022. The said interim order continued. The bank has contended that not only the purchaser is suffering but the bank is also not in a position to recover the dues from the sale of the property. It is submitted that the sale certificate has not yet been issued in view of the earlier order.

Mr. Das, learned advocate appearing on behalf of the petitioner submits that the sale notice was issued in the name of two dead persons. The death certificates would indicate the same and hence, the sale notice is bound to be set aside on account of procedural lapse.

The abovementioned issues which are factual, cannot be gone in this revisional application. The learned Debts Recovery Tribunal-III, Kolkata has rejected the prayer for interim order with reasons. The main application is still pending.

Under such circumstances, as the bank has waited for more than a year and this matter had not been disposed of, this Court is of the view that further two months' time should be available to the petitioner to get the main application being SA 410 of 2022 and all connected applications disposed of by the learned Debts Recovery Tribunal-III, Kolkata. The bank shall not issue the sale certificate nor take any action on the basis of the sale, till the abovementioned period expires. The learned Debts Recovery Tribunal III, Kolkata is directed to dispose of the SA 410 of 2022 along with pending applications within a period of two months from the date of communication of this order.

This Court has not gone into the merits. The learned tribunal shall decide the issue on their own merits and independently. All pleadings to be completed in the meantime. The learned tribunal shall act on the basis of the server copy of this order.

Accordingly, the revisional application along with all connected applications are disposed of.

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

(Shampa Sarkar, J.)