06.12.2023

Ct. 35
Sd. 66.

WPA 10198 of 2022

Dilip Kumar Rabidas
Vs.
State of West Bengal & Ors.

Md. Raziuddin ..For the petitioner.

Mr. Malay Kr. Roy ..For the respondent nos. 4 & 5.

The writ petitioner is aggrieved with the action of the Bank authorities in taking up the process of sale of the mortgaged house, of which the petitioner says that he is the sole owner and was devoid of any knowledge of its being mortgaged.

The petitioner's specific case is that the petitioner has been duped by way of forging of his signature by the respondent no. 8, i.e., his son, over a document, which facilitated the respondent no. 8 to obtain Bank loan, keeping the house property as mortgaged. The petitioner says that he has never been aware of the fact that the property was being kept mortgaged with the Bank and a loan against the same was obtained by the respondent no. 8. According to the petitioner, the loan amount was disbursed by the Bank to the account of respondent no. 8, of which the petitioner had no knowledge. It is stated that the petitioner gathered knowledge only after the sale notice, from the concerned authorities, had reached to him.

The petitioner is before this Court in this writ petition with two fold prayers that the sale order for auction of the concerned property be set aside, and that the property, which had already been handed over to the auction purchaser, be restored in the hands of the petitioner.

The respondent Bank is represented.

Learned advocate appearing for the Bank has referred to several documents annexed with the affidavit in opposition to submit that the writ petitioner cannot deny knowledge about the property being mortgaged with the Bank in view of the fact that the writ petitioner has been a joint borrower along with the respondent no. 8. He has relied on to the relevant documents to say that necessary steps have been duly taken up by the authorities, in terms of the statutory and other provisions, for auction of the property, for which the writ petitioner as well as the respondent no. 8 have defaulted to pay back the loan amount. Learned advocate appearing on behalf of the respondent Bank urges that the writ petition may be dismissed.

Fact remains that a civil suit is now pending between the parties before the competent court of law, as regard the title of the concerned property. On perusal of several documents annexed with the writ petition as well as the affidavit in opposition, it appears that not only the petitioner along with respondent no. 8 applied for loan before the respondent Bank but also has been mentioned as the beneficiary in the “loan sanction letter” of the Bank.

Accordingly, the documents prima facie indicate about due knowledge of the writ petitioner regarding mortgage of the concerned property. The fact of non-payment of loan is not disputed in this case, and the subsequent actions of the Bank authorities, pursuant to non-refund of the loan amount, appear to be in terms of the statutory provision.

The allegation of exercise of fraud upon the writ petitioner in obtaining loan and mortgaging the property would not, however, help the writ petitioner to obtain an order of setting aside of the sale of the property by the Bank authorities alleging fraud exercised upon him. The writ petitioner has not taken any step as per law for redressal of his grievance of fraud.

On the above facts and circumstances, I find no reason to interfere with the action of the respondent Bank authorities and the writ petition must fail.

In view of the above, the writ petition is dismissed.

Urgent photostate certified copy of this order be supplied to the parties on priority basis, if applied for.

(Rai Chattopadhyay J.)