

23. 06.09.2023
bd. Ct.15

W.P.A. 11266 of 2018

Mir Darbesh Ali & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Mohan Kumar Pututanda

Mr. Abhinaba Chatterjee ... for the petitioners.

Mr. Pradip Kumar Ray

Mr. Joydip Ray ... for the respondent no.1

Mr. Ankit Sureka

Mr. Biplab Das ... for the respondent
Nos. 2 and 4.

Mr. Nilanjan Bhattacharya

Mr. Arpan Guha

Mr. Abhilash Chatterjee

Mr. Saikat Dey ... for the respondent no.8.

Mr. Nirmalya Biswas

Mr. Debdeep Sinha ... for the respondent no. 15.

In the writ petition primarily challenge has been thrown to the order dated 19th April, 2011 passed by the Arbitrator in a Dispute Case No. 13 of 2010-2011 whereby the Arbitrator after hearing the parties found that the claim of the plaintiff Bank was virtually admitted by the defendant Co-operative Society in connection with the loan taken from the bank by the said defendant Co-operative Society Limited. Upon expressing satisfaction with regard to the case made out on behalf of plaintiff Bank direction was given for recovery of the principal amount within certain time along with interest at the rate fixed by the Arbitrator as delineated in details in the order dated 19th April, 2011. It has also been directed that if the payment

as directed by the Arbitrator is not made on or before the fixed date mortgaged and hypothecated properties or sufficient part thereof set out and described in the schedule be sold and proceeds of the sale after defraying therefrom the expenses of the sale be utilised for setting off dues. Petitioners are aggrieved by the order passed by the Arbitrator dated 19th April, 2011 on certain grounds which are taken in the writ petition. The grievance of the petitioners has also been ventilated in view of the fact that the Arbitrator being the Assistant Registrar of Cooperative Societies ought not to have given direction for sale of the property of the defendant cooperative society.

Petitioners pray for appropriate direction for setting aside the sale which has taken place in favour of respondent no. 15 pursuant to the impugned order dated 19th April, 2011 since the same was not communicated to the petitioners and they were not aware of the said order dated 19th April, 2011 for considerable period of time. Therefore it has been prayed for on behalf of petitioners that the writ petition needs to be entertained in order to appreciate the grievance ventilated upon instituting the same.

The learned advocates representing respondent no. 15 and respondent no. 8 as well as respondent nos. 2 to 4 have jointly opposed the prayer made in this writ petition on the ground that the writ petition is not maintainable in view of availability of remedy of preferring appeal before the Co-operative Tribunal since the order which is

assailed in this writ petition has been passed in a proceeding drawn up under section 102 of the West Bengal Co-operative Societies Act, 2006.

On behalf of respondent no. 8 namely Susanta Jana, Ex-Secretary of the Co-operative Society namely Midnapore Electrical Construction Co-operative Society Ltd, it has been submitted by the learned advocate that said order dated 19th April, 2011 was challenged by preferring an appeal before the West Bengal Co-operative Tribunal and it was registered as Appeal Case No. 37 of 2013 but such challenge failed in view of the order passed by the Tribunal on 14th September, 2017. Copy of the said appeal is placed before this Court which is taken on record.

Having considered the submissions made on behalf of the parties it appears that there is substance in the contention of the respondents with regard to availability of provisions for preferring appeal before the Tribunal in terms of section 147 of the West Bengal Co-operative Societies Act, 2006 read with sections 102 and 103 of the said Act. On conjoint reading of section 147 and relevant part of the 3rd Schedule it appears against serial no. 8 in the table an order, decision or award under section 103 can be appealed against before the Co-operative Tribunal by any aggrieved person. It is clear on perusal of the order dated 19th April, 2011 that the order was passed by the Arbitrator upon drawing a proceeding under section 102 and in view of provisions under section 103(3) a dispute relating to any Co-operative Society other than those mentioned in sub-section 2 shall be filed before the

officer authorised to exercise powers of Registrar who may decide the dispute himself as arbitrator or appoint an arbitrator or a forum of arbitrators for disposal of the dispute.

In view of the provisions as contemplated under section 103 read with section 147 it appears that under 3rd Schedule of the said Act the order dated 19th April, 2011 is an appealable order before the Co-operative Tribunal under serial no. 8 of the aforesaid 3rd Schedule.

In view of above provisions as contained in West Bengal Co-operative Societies Act, 2006 it further appears that there is an alternative efficacious speedy remedy available before the appellate authority as contemplated under the 3rd Schedule of the said Act of 2006.

Accordingly, the writ petition is not entertained and the same stands dismissed thereby granting leave to the petitioners to prefer appeal before the appropriate authority in terms of the relevant provisions of the West Bengal Co-operative Societies Act, 2006.

If such appeal is preferred by the petitioners within fortnight from this date along with an application for condonation of delay the same shall be considered by the Appellate Authority sympathetically taking note of the fact that a writ petition was filed before this Court and same was pending from the date of its institution on 5th July, 2018 till date.

Parties shall be at liberty to take steps in terms of this order on obtaining server copy of the same after downloading from the official website of this Court.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)