

July 5, 2023
Sl. No.29
Court No.19
s.biswas

CO 2018 of 2023

Ramsarup Industries Limited
vs.
CFM Assets Reconstruction Private Limited and another

Mr. Ratnanko Banerji, Sr. Adv.
Ms. Manju Bhuteria
Mr. Suddhasatva Banerjee
Mr. Shounak Mitra
Ms. Shivangi Thard

... for the petitioner

Mr. Deepanjan Dutta Roy
Ms. Sanjana Jha

... for the opposite party no.1

Relying on the provision of Section 231 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), the defendant in Title Suit No.113 of 2023, which is pending before the learned Civil Judge (Junior Division), Kalyani, Nadia, has been filed this revisional application, challenging the order dated June 5, 2023. The order impugned is an order granting an ad interim injunction.

Mr. Banerji, learned senior advocate, appearing on behalf of the petitioner submits that Section 231 of the Code bars the jurisdiction of the civil court in respect of matters which were to be dealt with in accordance with the Code. Taking the court through different paragraphs of the plaint, Mr. Banerji submits that the entire issue with regard to the bankruptcy of Ramsarup Industries Limited, which is defendant no.1 in the title suit, the Corporate Insolvency Resolution Process and the ultimate acquisition of the company by the successful

resolution applicant, had been finally adjudicated and contested up to the Hon'ble Apex Court.

Thereafter, the plaintiff/opposite party tried various methods to disturb the resolution plan and implementation thereof. It is specifically urged that an amount of Rs.351 crores was spent in the process and paid in terms of the resolution. The plaintiff as the assignee of an asset reconstruction company, instead of fulfilling its obligation in terms of the resolution plan, obstructed in the smooth execution of the same. The plaintiff also filed suits surreptitiously in order to obtain blanket injunctions. One such suit was withdrawn and thereafter the present suit had been filed, in which the order impugned was passed.

Mr. Banerji further submits that the pleadings itself would indicate that the suit was barred. The subject matter of the suit related to the Corporate Insolvency Process and the National Company Law Tribunal alone, had jurisdiction to decide such issues. The issues were finally adjudicated and could not be reopened.

According to Mr. Banerji, the order suffers from lack of subject matter jurisdiction and this court by invocation of power under Article 227 of the Constitution of India must set aside the order impugned, by which the successful resolution

applicant was restrained from transferring, alienating or creating third party interest in the property, which has vested in the said applicant.

It is submitted that such order was passed when the local Bar had adopted a resolution that the court should not pass any adverse orders.

Mr. Dutta Roy, learned advocate appearing on behalf of the opposite party no.1 submits that the revisional application is not maintainable as the contention of Mr. Banerji that his client had paid up the entire amount as per the resolution plan, was also incorrect.

Having perused the order impugned, this court is of the view that upon appreciation of the materials on record, an ad interim order of injunction was passed. Such order is an appealable order and the Code of Civil Procedure specifically provides for an appeal from an order of injunction passed by the learned trial court. As there is a specific provision of appeal under the Code, which is a complete Code, the jurisdiction of this Court cannot be invoked at this stage in this proceeding. The petitioner has to challenge the ad interim order passed by approaching the appropriate forum. The issue with regard to maintainability must also be agitated in the proper forum.

The revisional application is not entertained. Liberty is granted to the petitioner to prefer a misc. appeal in accordance with law. If such misc. appeal is preferred, the same shall be disposed of within a month from its filing. The correctness of the order of ad interim injunction shall be decided by the learned lower appellate court. This court has not entered into the merits of the case.

A copy of the memorandum of appeal along with application, if any, shall be served in advance upon the opposite party no.1, so that the hearing of the appeal is expedited.

Liberty is granted to the petitioner to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.

The revisional application is thus disposed of.

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

(Shampa Sarkar, J.)