

17th July,
2023
(AK)
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W.P.A 15490 of 2023

Masrur Alam
Vs.
Canara Bank and others

Mr. Swarup Banerjee
Mr. Arindam Chatterjee
Mr. Md. Salman

...for the petitioner.

Mr. Omkar Ganguly
Ms. A. Raha

...for the respondent nos.1, 2 & 3.

Mr. Suddhadev Adak

...for the State.

Learned counsel for the petitioner submits that the petitioner seeks certain information, for which the first forum was initially approached. Ultimately, after traversing the path of a first appeal, a second appeal has been preferred by the petitioner before the second appellate authority under the Right to Information Act, 2005 (Act of 2005).

It is submitted that the said authority be directed to furnish information as sought by the petitioner.

Learned counsel appearing for the Bank, at the inception, takes an objection as to maintainability of the writ petition.

First, it is submitted, Section 19(1) of the 2005 Act stipulates the provision of a second appeal, which has

been sought to be by-passed by the petitioner in the instant writ petition.

That apart, it is argued, the petitioner took a previous round of litigation where the writ petition was dismissed by a co-ordinate Bench.

Being aggrieved, the petitioner had preferred an appeal, wherein the Division Bench also granted liberty to the petitioner to approach the second appellate authority with a second appeal.

That apart, it was held by the Division Bench that the appellant/present petitioner would also have opportunity to approach the Debts Recovery Tribunal with similar prayer.

Thereafter, it is submitted, the petitioner took advantage of the said liberty by filing a second appeal as well as taking out a similar application in connection with the Debts Recovery Tribunal proceeding, however, in order to forum shop, the petitioner has now preferred the present writ petition, also on similar ground.

It is submitted that the petitioner/borrower has been attempting in this fashion to evade the process of justice and to procrastinate the proceedings before the tribunal.

Heard learned counsel for the parties.

The petitioner has, in the present writ petition, virtually sought for furnishing of certain information by the respondent-Bank.

The petitioner has also sought a mandamus directing the Central Information Commission, that is, the second appellate authority, to take steps pursuant to the petitioner's prayer.

It is seen from the previous order of a co-ordinate Bench passed in WPA 10599 of 2022, which was also at the behest of the petitioner, that the learned single Judge observed that apart from the provisions of the RTI Act, 2005, the information sought by the petitioner appeared to be a mere ploy to interfere with the proceedings taken by the Bank under the SARFAESI Act, 2002.

The court found that there was no merit in the writ petition, which was dismissed by the co-ordinate Bench.

In the appeal preferred against the same, the Division Bench presided over by the then Chief Justice observed that under Section 19(3) of the 2005 Act, second appeal lies against the order of the authority passed in first appeal.

It was further stated that the learned Single Judge had observed that the information sought comes within the exemption under Section 8(1)(j) of the Act, but the orders of the first appellate authority did not assign any such ground; hence the second appeal, if filed, would be decided by the appellate authority on its own merit without being influenced by the observation made by the learned Single Judge.

It was further observed by the Division Bench that the appellant had filed the second appeal before the DRT against the action of the Bank, in which the appellant also had the opportunity to file the appropriate application to requisition the record of auction proceedings.

A copy of the application filed by the petitioner before the Debts Recovery Tribunal is handed over by learned counsel for the respondent-Bank, which indicates that prayers exactly similar to the present writ petition pertaining to the information and query asked by the petitioner, were also sought in the said application. The said application is pending.

On the other hand, the second appeal filed by the petitioner, taking advantage of the liberty granted by the Division Bench, was refused to be entertained twice by the second appellate authority, since there were technical deficiencies in the said appeal.

It is submitted by learned counsel for the petitioner that the said deficiencies have been taken care of.

At present, the second appeal is pending before the authorities, along with an accompanying application for condonation of delay in presenting the same.

Hence, the relief sought in the present writ petition, as rightly pointed out by the respondent-Bank, has also been prayed and is now sub judice before two other

forums, being the Debts Recovery Tribunal as well as the second appellate authority.

Hence, there is no scope of passing any direction in the present writ petition.

In view of the pendency of the other applications before other forums, seeking the same relief, the writ petition is not maintainable at all.

Accordingly, WPA No. 15490 of 2023 is dismissed as not maintainable.

However, nothing in this order shall preclude the petitioner from pursuing the remedies before the Debts Recovery Tribunal and the Second Appellate authority under the RTI Act, 2005, which have already been preferred by the petitioner.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)