

12
30.11.2023
mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 18900 of 2023

Smt. Tanim Halder & Anr.
Vs.
Indian Bank & Ors.

Mr. Soumabho Ghose,
Mr. Soumalya Ganguly
...for the petitioners

Mr. Sudip Pal Choudhuri,
Ms. Diya Nandi
...for the Indian Bank

1. Learned counsel appearing for the petitioners contends that the petitioners have no connection whatsoever with the judgment-debtor, but in the garb of recovery proceedings, the petitioners' property is sought to be taken away.

2. Learned counsel appearing for the Bank controverts such submission and submits that there is a nexus between the petitioners and the borrower inasmuch as the petitioners' predecessor had sold the property to the predecessor-in-interest of the borrower.

3. It transpires from the records that the petitioners sought to intervene in a recovery

proceeding, which was turned down by the Recovery Officer on the ground of lack of jurisdiction of the said Officer, which order was also affirmed subsequently.

4. Learned counsel for the petitioners submits that since the impugned action of the Bank is palpably without jurisdiction, the principles of natural justice have been violated and the writ jurisdiction ought to be invoked.

5. However, a factual dispute has arisen as to whether the petitioners' predecessor had transferred the property in favour of the borrower and/or the borrower's predecessor, which would be germane in adjudication of the issue.

6. Thus, it would not be prudent for the writ court to entertain the writ petition, thereby taking upon itself the task of factual adjudication of disputed questions of fact, which require assessment of evidence.

7. Accordingly, W.P.A. No. 18900 of 2023 is dismissed as not entertained.

8. Leave is granted to the petitioners, however, to approach the appropriate Tribunal with a challenge as preferred in the present writ petition.

9. If so approached, the concerned Tribunal shall decide all issues involved in accordance with law independently without being influenced in any manner by any of the observations made herein.

10. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)