

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1451 of 2022
with
CAN 1 of 2022

Reserved on: 25.01.2023
Pronounced on: 22.02.2023

Masrur Alam

...Appellant

-Vs-

Canara Bank and Others

...Respondents

Present:-

Mr. Swarup Banerjee,
Mr. Sajal Kr. Ghosh,
Mr. Arindam Chatterjee,
Mr. Md. Salman, Advocates

... for the appellant

Mr. Naba Kumar Das,
Mr. Subhabrata Das, Advocates

... for the State

Mr. Onkar Ganguly,
Mr. Ayanabha Raha, Advocates

... for the respondent Nos. 1 to 4

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this intra-court appeal, writ petitioner has challenged the order dated 22nd of July, 2022 dismissing W.P.A. 10599 of 2022.

2. Appellant had filed the petition with the plea that he was the borrower from the respondent No.1 bank and had come to know on 4th of February, 2019 that the secured asset at 24/1A, Chandra Nath Roy Road was sold by the bank. The petitioner had alleged in the petition that due process was not followed by the bank. It was further alleged that the petitioner had filed application seeking information under Right to Information Act, 2005 which was not supplied and the first appeal filed under the RTI Act was also wrongly rejected.

3. Learned Single Judge has dismissed the petition taking the view that the information sought for by the petitioner comes within exemption 8(1)(j) of the RTI Act and the information sought for by the petitioner appears to be a mere ploy to interfere with the proceedings taken by the bank under SARFAESI Act, 2002.

4. Submission of learned Counsel for the petitioner is that the information sought by the petitioner does not come within the exemption under Section 8(1)(j) of the Act and the petitioner is only seeking information in respect of the action taken by the bank. He has also submitted that the appellate order is a non-reasoned order.

5. Learned Counsel for the bank has raised the issue that under Section 19 of the Act second appeal lies and that the second appellate authority is ready to entertain the appeal and that documents J, G and H in the application under the RTI dated 09.07.2019 were personal documents.

6. We have heard learned Counsel for the parties and perused the record.

7. Record reflect that appellant had initially filed the application dated 19th of July, 2019 seeking information/documents on as many as ten grounds enumerated as (a) to (j) in the application. Vide reply dated 26th of July, 2019, the Information Officer had supplied the information on some of the points and had refused in respect of other. Thereafter vide application dated 13th of March, 2020, appellant had again applied for certain information. The Information Officer vide reply dated 19th of May, 2020 had declined the prayer stating that the information was already supplied vide reply dated 26.07.2019. First appeal dated

12.06.2020 filed by the appellant against this order was rejected by the first appellate authority by order dated 30th of June, 2020.

8. Under Section 19(3) of the RTI Act, 2005 second appeal lies against the order of the authority passed in first appeal. Thus, the appellant has the remedy of filing the second appeal against the order of the first appellate authority. We do not find any justifiable ground to bypass the statutory remedy of second appeal especially when the respondent is ready to entertain the second appeal. We find that learned Single Judge has observed that the information sought for comes within the exemption under Section 8(1)(j) of the Act but the orders of the original/first appellate authority do not assign any such ground for rejection of the prayer, hence the second appeal, if filed, will be decided by the authority on its own merit without being influenced by the observation made by the learned Single Judge in this regard. That apart, we also find that the appellant has filed the second appeal before the DRT against action of the bank, hence in that second appeal also the appellant will have the opportunity to file the appropriate application to requisition the record of auction proceedings.

9. In the aforesaid circumstances, we dispose of the appeal by modifying the order of the learned Single Judge to the extent indicated above and granting liberty to the appellant to avail the remedy of second appeal under the RTI Act within two weeks.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
22.02.2023

PA(SS)

(A.F.R. / N.A.F.R.)