12.10.2023
Item No.2
PG/RP
Ct. No.1

MAT 1797 of 2023
With
IA No.CAN 1 of 2023

Regional Manager, Canara Bank & Anr.
Vs.
Ruma Chakraborty & Anr.

Mr. Manas Dasgupta
Mr. Kabita Mukherjee
Mr. Gourav Das
... for the Appellants

Mr. Tilak Mitra........for the Union of India

Mr. Kaushik Ch. Gupta.....for the respondent/
Writ petitioner

1. This intra-Court appeal by the Canara Bank, respondent in W.P.A. 19071 of 2023 has been filed challenging the order dated 6th September, 2023.The writ petition was filed by the first respondent herein challenging the action of the appellants/bank in not returning the gold jewellery, which were mortgaged to the bank while availing a gold loan.

2. The case of the appellants/bank is that in terms of the gold loan document, the bank is empowered to sale the jewellery for appropriation towards any account(s) due and payable by the writ petitioner and waive their rights to notice of such sale of the pledged jewellery in public/private auction as the bank may deem fit

to realise without prejudice to rights of the bank to proceed to recover the dues including the shortfall after appropriation of the sale proceeds.

3. The gold loan policy was also relied upon by the appellants, which empowers the appellants/bank that in case the respondent/borrower is having overdues/NPA in any of his direct liabilities and indirect liabilities, the excess amount, which was realised after adjustment of the gold loan has to be appropriated towards the same after giving due notices. The writ petition was disposed of without calling for affidavits and the learned Single Bench has come to the conclusion that the appellants/bank does not have a general lien or a banker's lien over the gold jewellery.

4. In our view, the matter involves disputed questions of fact and the writ petitioner ought not to have filed a writ petition for such a relief, more particularly when the writ petitioner has already filed an appeal against the action initiated by the appellants/bank under the provisions of the SARFAESI Act before the Debts Recovery Tribunal and the said appeal is to be heard by the learned tribunal on 30th November, 2023.

5. Whether the documents executed by the writ petitioner empowers the appellants/bank to have a general lien over the gold jewellery, is a factual

issue, which cannot be decided solely on hearing the parties as the adjudicating forum is to consider all documents, which were executed by the respondent/writ petitioner/borrower while availing the overdraft facility as well as availing the gold loan. Therefore, the appropriate forum for the writ petitioner to agitate his grievance is the Debts Recovery Tribunal in the proceedings, which has already been initiated by the writ petitioner.

6. It is the submission of the learned counsel for the writ petitioner that the notice issued under section 13(2) of the SARFAESI Act would not cover the gold jewellery, which have been pledged with the appellants/bank. This submission is incorrect because the gold loan policy empowers the appellants/bank to appropriate the amount in case of excess after the sale of the gold jewellery and adjustment towards the gold loan account to any other dues or NPA in any of the borrowers direct liabilities or indirect liabilities.

7. So, the entire issue now has to be agitated before the Debts Recovery Tribunal and the Debts Recovery Tribunal will take a decision as to the correctness of the stand taken by the respondent/writ petitioner

8. Therefore, we hold that the writ petition was not maintainable and the writ petitioner ought to have been directed to approach the Debts Recovery Tribunal by way of appropriate miscellaneous application seeking for appropriate relief, which will be decided by the learned tribunal on merits and in accordance with law.

9. For the above reasons, the appeal is allowed. Connected application is disposed of. The order passed in the writ petition is set aside and the writ petition is held to be not maintainable.

10. The respondent/writ petitioner is directed to file a miscellaneous application in the pending appeal before the Debts Recovery Tribunal with the server copy of this order and we would request the learned tribunal to hear out the application preferably on 30th November, 2023 or on any date, which the learned tribunal may fix and pass appropriate order on the miscellaneous application at the first instance.

11. We make it clear that the observations made in the order passed in the writ petition have been set aside and it is open to the learned tribunal to decide the matter on merits and in accordance with law.

12. In the light of the above directions, the appellants/bank are restrained from putting up

the gold jewellery for public/private auction and shall abide by the directions/orders that may be passed by the learned tribunal in the application that has been directed to be filed by the respondent/writ petitioner.

13. The learned advocate for the appellants is permitted to file the original certified copy of the impugned order.

14. No costs.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)