

D/L. 47.
October 17, 2023.
MNS.

WPA No. 23443 of 2023

Suvomay Chakraborty
Vs.
State Bank of India and others

Mr. Avirup Chatterjee,
Mr. Prasenjit Pal,
Mr. Rishav Das

... for the petitioner.

Mr. Debashis Saha,
Ms. Srabanti Das

...for the State Bank of India.

Mr. Sumitava Chakraborty

...for the respondent no. 3.

1. Learned counsel for the petitioner contends that the petitioner does not have any alternative forum since the application of the petitioner under Rule 11 of the Second Schedule of the Income Tax Act, 1961 is to be decided at present before the Kolkata Debts Recovery Tribunal No. 2, which is not functioning.
2. It is argued that the petitioner is a tenant in respect of the secured asset, possession of which was taken by the Bank. At present, the sale of the said asset is scheduled to be held soon, that is, on November 6, 2023.

3. It is argued that in the event the sale goes through prior to the disposal of the Rule 11 application, the rights of the petitioner shall be curtailed without the petitioner having any hearing.
4. Learned counsel appearing for the State Bank of India vociferously opposes the prayer of the petitioner. It is contended that the petitioner was admittedly induced by a purported lease deed on January 2, 2019, whereas the order of the Tribunal against the borrower-respondent no. 3 was passed on May 21, 2009. Hence, the petitioner is set up by the borrower, it is argued, and ought not to be favoured with any interim order.
5. That apart, by the order dated May 21, 2009, the defendants were debarred from transferring, alienating, encumbering or disposing of the mortgaged and/or hypothecated property, in contravention of which the present transfer in favour of the petitioner has been made.
6. Upon hearing learned counsel for the parties, the contentions of the Bank transpire to be much more justified than the petitioner.

7. The transfer by way of lease, if any, in favour of the petitioner is tainted and at least irregular, even if not outright illegal, being effected in the teeth of the restraint order made by the Kolkata Debts Recovery Tribunal No. 2.
8. Since the transfer, even if actually done, was in contravention of the said order of injunction on the borrower, the same cannot be the basis of any claim of equity by the petitioner.
9. In any event, the purported lease was executed in favour of the petitioner admittedly in the year 2019, that is, a decade after the restraint order was passed against the borrower.
10. The petitioner claims his right through the borrower, that is, the respondent no.3, and, as such, claims a higher right than that of the borrower himself.
11. Based on such principle, I am not convinced even prima facie to favour the petitioner with an interim order. However, since the concerned Bench of the Tribunal is temporarily not functioning, the petitioner is granted liberty to move the said Tribunal.

12. It is made clear that the findings above are only tentative and on a *prima facie* footing to ascertain the ground for granting an interim order and shall not affect the final hearing of the Rule 11 application of the petitioner by the Tribunal.

13. WPA No. 23443 of 2023 is accordingly disposed of with liberty to the petitioner to move the appropriate forum as and when the Tribunal is presided over with an Officer.

14. There will be no order as to costs.

15. 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.)