12.07.2023
Sl. No.12(DL)
srm

C.O. No. 3287 of 2022

Mita Chatterjee

Versus

The Authorised Officer, Indian Bank & Ors.

Mr. Avirup Chatterjee
…for the Petitioner.

Mr. Ayan Banerjee,
Mr. Pinaki Brata Ghosh,
Ms. Sushmita Mazumdar,
Mr. Suman Banerjee,
Mr. Koushik Karmakar
…for the Opposite Party No.4.

Despite service, none appears on behalf of the Indian Bank as also the Reliance Assets Reconstruction Company Limited. Affidavit-of-service is taken on record.

Mr. Banerjee, learned Advocate appears on behalf of the purchaser, who claims to have purchased the asset in an auction sale.

This revisional application has been filed challenging an order dated August 31, 2022 passed by the learned Debts Recovery Appellate Tribunal at Kolkata in Appeal No.229 of 2017.

By the order impugned, the learned appellate tribunal directed that the names of the respondent Nos.1 and 2 be deleted from the array of the respondents in the appeal preferred before the said tribunal in view of incorporation of Reliance Assets Reconstruction Company Limited as the respondent No.1A, the assignee. The petitioner is aggrieved by the said order on the following grounds:

(a) The bank may have transferred the asset to the added respondent No.1A, but for proper and effective adjudication of the appeal, the presence of Indian Bank would be necessary.

(b) That the bank had illegally extended the life of the mortgage after the death of the guarantor on the basis of an alleged Will, behind the back of the petitioner, who claims to be a co-sharer in respect of the property. Although the assignment was made sometime during the pendency of the proceeding before the learned Debts Recovery Tribunal, such assignment of the asset in favour of the Reliance Assets Reconstruction Company Limited had not been brought on record by the bank, for *mala fide* reasons.

(c) The actions of the bank prior to transfer of the asset had a significant role to play in the point raised in appeal.

(d) The order dated April 25, 2018 was passed without granting any opportunity to the petitioner to place his case. Thereafter, by an application, the petitioner elaborately explained why the bank was required to be continued as a respondent and prayed for modification of the order dated April 25, 2018 to the extent that the respondent Nos.1 and 2 be continued as respondents in the appeal.

Heard the parties. The facts of the case are that an application filed by the petitioner before the learned debt recovery tribunal challenging the sale notice, was rejected. The bank contested the proceeding. Thereafter, the petitioner filed the appeal before the learned appellate tribunal. The appeal was registered as Appeal No.229 of 2017. During the hearing of the appeal it was submitted by the bank that the asset had been transferred by the Indian Bank to the Reliance Assets Reconstruction Company Limited. Accordingly, the bank was allowed time to file a substitution application.

The bank filed a substitution application for substitution of Reliance Assets Reconstruction Company Limited. The application for substitution was allowed by an order dated April 25, 2018 and Reliance Assets Reconstruction Company Limited was substituted as respondent No.1A. As the names of the respondent Nos.1 and 2 continued in the array of respondents, the learned tribunal, by the order impugned, directed the deletion of the respondent Nos1 and 2 from the array of respondents in the appeal.

It appears from the records that an application for modification of the order dated April 25, 2018 allowing the substitution of Reliance Assets Reconstruction Company Limited, was filed by the petitioner, assigning reasons as to why the Indian Bank and its authorised officer who were respondent Nos.1 and 2 in the appeal, should be retained as respondents. The learned appellate tribunal did not consider the said application, although noted that the application had been filed.

Being aggrieved, the petitioner has come up before this Court.

This court having considered the fact that the appeal arises out of an order passed by the learned Debts Recovery Tribunal-III, Kolkata, in the presence of the bank and upon contest by the bank, without recording the transfer of the asset to the respondent No.1A and further having considered the fact that the petitioner has assailed certain activities of the bank in respect of the asset, deems it fit to modify the order impugned to the extent that the respondent Nos.1 and 2 shall continue to remain in the array of the respondents in Appeal No.229 of 2017 and the portion of the order directing deletion of their names from the cause title of the memorandum of appeal, is set aside. What transpired before the asset was transferred to the respondent No.1A in respect of the non-performing asset, may be relevant for adjudication of the appeal and thus, the bank is a proper party in the proceeding as per the petitioner's case. The carriage of proceedings is in the hands of the petitioner, as the petitioner is the appellant. The presence of the bank will aid in a complete, effective and constructive adjudication of the appeal.

This order is neither on the merits of the claim of the petitioner nor on the merits of the appeal.

The learned appellate tribunal shall continue to hear the appeal and dispose of the same preferably, within a period of three months from the date of communication of this order.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)