D/L
Item No. 06
11.12.2023
*KOLE*

**MAT 2034 of 2023**
**With**
**IA CAN 1 of 2023**

**Mili Majhi & Anr.**
**-Vs.-**
**The State of West Bengal & Ors.**

*Ms. Juin Dutta Chakraborty,*
*Mr. Bidan Modak,*
*... for the appellants.*
*Mr. Suman Sengupta,*
*Mr. A. Panja Moulick,*
*... for the State.*

*Mr. Atindranath Mishra,*
*... for the respondent nos. 2 o 5.*

By consent of the appearing parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated September 25, 2023, whereby a learned Judge of this Court disposed of the appellants' writ petition being WPA 19207 of 2023, is under challenge in this appeal.

The husband of the appellant no. 1, who was the father of the appellant no. 2, had borrowed money from the Baltikuri Cooperative Bank Limited (in short 'the Bank') in the year 2011. He having failed to repay the loan, his account was declared to be a Non-Performing Asset (NPA) by the Bank.

The Bank has issued a notice of 'proclamation of sale of immovable property' dated May 19, 2023 for sale of the house that was mortgaged to the Bank as security for the loan. The total due of the Bank as mentioned in that notice is Rs. 14 lac.

Challenging the proclamation notice, the appellants approached the learned Single Judge, the original borrower having passed away in the meantime.

Initially, an order dated August 9, 2023 was passed by the learned Single Judge, the relevant portion whereof reads as follows:-

> *"Learned Advocate representing the petitioners submits that the widow and the son of the original borrower are trying their best to pay of the dues. The property in question is the only dwelling house of the petitioners and if the same is put on auction, the family will be left roofless.*
>
> *On the prayer made on behalf of the petitioners, one opportunity is granted to pay off the dues.*
>
> *Learned advocate for the petitioners submits that a sum of Rs. 4,00,000/- will be paid by the petitioners by tomorrow i.e. on August 10, 2023.*
>
> *If the aforesaid amount is paid by the petitioners, then a fresh due statement shall be calculated and handed over to the petitioners by the bank. The petitioners will be obliged to clear the balance payment.*
>
> *To take note of the fact whether the payment has been made as per the undertaking given in Court, the matter is adjourned till August 31, 2023. The bank shall come up with a fresh statement on the adjourned date.*
>
> *The bank is restrained from proceeding any further with auction of the subject property till September 30, 2023 or until further order whichever is earlier.*
>
> *The calculation handed over by the learned advocate representing the bank be retained with the records."*

A further order dated August 31, 2023, was recorded by the learned Single Judge which reads as follows:-

> *"Learned advocate appearing for the petitioners submits that Rs. 4,00,000/- as was directed to be paid by the order of this Court dated 9th August, 2023, was duly paid.*
>
> *Learned advocate appearing for the petitioners seeks an opportunity of hearing before the Chief Executive Officer of the Baltikuri Co-operative Bank Limited.*
>
> *The petitioners submit that they are willing to settle the loan account.*
>
> *The Chief Executive Officer of the Baltikuri Co-operative Bank Limited is directed to give opportunity of hearing to the petitioners to find out a mode and manner of settlement of the loan account.*
>
> *Opportunity of hearing shall be provided at the earliest, but positively within a period of fortnight from date.*
>
> *The petitioners will be entitled to produce all documents and receipts in support of the payment made to the Bank.*
>
> *The Chief Executive Officer shall consult the records maintained in the Bank and the receipt(s) produced by the petitioners and thereafter take a decision as to how the issue can be resolved.*
>
> *The matter stands adjourned till 26th September, 2023.*
>
> *The Bank is directed to file an updated report before this court on the adjourned date."*

Finally, on September 26, 2023, the learned Single Judge found from a statement filed before Her Ladyship signed by the Chief Executive of the Bank, that a sum of Rs. 10,08,759/- is due and payable by the writ petitioners to the Bank. The Bank had permitted the writ petitioners to repay the said amount within September 30, 2023.

The Learned Judge disposed of the writ petition by directing the writ petitioners to make the necessary payment within the prescribed date and by observing that in the event the writ petitioners fail to deposit the sum demanded by the Bank, it will be open for the Bank to take necessary steps in accordance with law.

Being aggrieved, the writ petitioners have come up by way of this appeal.

We have heard Ms. Chakraborty, learned Advocate, representing the appellants/writ petitioners and Mr. Mishra, learned Advocate, representing the Bank. Admittedly, moneys are due from the appellants to the Bank. The appellants say that they are willing to repay the dues. They ask for time. The Bank says that sufficient time has been granted to the appellants. The concerned money is public money. The Bank cannot do charity with public money. All steps taken by the Bank are in accordance with law.

Learned Advocate for the appellants contends that the Bank never followed the relevant guidelines issued by the Reserve Bank of India. Learned Advocate for the Bank strongly disputes such contention.

We may have full sympathy for the appellants/writ petitioners. However, sympathy cannot be the ground for passing orders in a Court of Law. It is not in dispute that moneys are due to the Bank from the appellants. If the appellants can enter into a settlement with the Bank, nobody will stand in the way. We are, however, unable to grant any relief to the appellants. We do not find any apparent infirmity in the order of the learned Single Judge which is assailed before us.

The appeal and the connected application are, accordingly, dismissed. There will be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(**Arijit Banerjee**, **J**.)

**(M. V. Muralidaran, J.)**