

11.01.2023

MAT 2064 of 2022
With
CAN 1 of 2022
State Bank of India & Anr.
Vs.
Shankar Saw Mills Pvt. Ltd.

Mr. Joy Saha, Sr. Adv.
Mr. Pijush Kanti Ray

... ... for the appellants

Mr. Dulal Dey
Mr. Subrata Sikdar

... ... for the respondent

By this intra-court appeal appellant bank has challenged interlocutory order of the learned Single Judge dated 22nd November, 2022 whereby e-auction notice dated 22nd October, 2022 issued by the bank has been stayed.

The appellants have also challenged the subsequent order dated 1st December, 2022 whereby the learned Single Judge has taken note of the fact that the interim order was operating in the petition and granted opportunity to writ petitioner to argue the petition on the next date of hearing.

The record reveals that the respondent (writ petitioner) is a borrower from the appellant bank who had committed default. Hence, proceedings under the SERFAESI Act were initiated and some OTS efforts were also made. Hence, writ petition has been filed seeking a direction to the bank to extend the settlement sanctioned by the bank and also challenging the order dated 16th June, 2022.

Initially learned Single Judge had allowed the petition by order dated 14th July, 2022 which was subject matter of challenge before the Division Bench in MAT 1129 of 2022 and the appeal was disposed of by order dated 3rd August, 2022 setting aside the order of the learned Single Judge noting that the appellant bank did not have opportunity to file affidavit-in-opposition and place the documents on record.

The petition was to be decided afresh after giving opportunity to the parties to file affidavit-in-opposition and affidavit-in-reply. An objection relating to maintainability of the petition was raised by the appellants, therefore the said objection was left open.

The appellant bank thereafter had issued the auction notice dated 22nd October, 2022 fixing the date of e-auction on 22nd November, 2022 which was stayed by the learned Single Judge by the impugned order and the stay is continuing.

Learned counsel for the appellants submits that the bank has right to issue auction notice and to take steps for recovery and no illegality was committed by the bank in issuing such a notice because no order of stay was operating when the notice was issued and that the respondent (writ petitioner) has remedy before the DRT and the learned Single Judge has committed an error in passing the interim order without deciding the issue of maintainability of the petition.

He has further submitted that the adverse observation made against the bank will cause serious prejudice in future proceedings.

Learned counsel for the respondent has submitted that the pleadings are now completed before the learned Single Judge and the matter has been fixed for final argument, therefore no interference is required at this stage.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that by the impugned order learned Single Judge had stayed the auction notice dated 22nd October, 2022 fixing the auction on 22nd November, 2022. Both the dates have now passed, therefore, even otherwise auction notice does not survive. Therefore, examining of the correctness of the order of the learned Single Judge at this stage will be an academic exercise.

It is also worth noting that subsequently the appellant bank had issued the auction sale notice dated 3rd December, 2022 and a prayer was made by the writ petitioner in the pending writ petition for staying of the said auction notice but the learned Single Judge by order dated 23rd December, 2022 had refused to pass any interim order by taking note of the fact that the writ petitioner was already before the DRT under the SERFAESI Act. Thus in view of the subsequent events also the interim order has effectively lost its force.

So far as the submission of learned counsel for the appellants that the observation about questionable conduct of the bank made by the learned Single Judge in the impugned order is concerned, we find that it is only a tentative observation made at the stage of the passing of the interlocutory order, therefore we make it clear that such an observation will not be used to the prejudice of the appellant bank in any other proceedings.

It has been pointed out that now pleadings are completed before the learned Single Judge in the pending petition and the petition has been fixed on 20th January, 2023.

Learned counsel for the respondent has categorically stated before this Court that he will not seek any adjournment in the petition and will argue it on the next date of hearing on the issue of maintainability/merit of the petition.

We also expect that having regard to the nature of the controversy involved in the matter and the previous order of this Court learned Single Judge will take up the petition and hear it on the next date of hearing.

The appeal is accordingly disposed of.

Connected application is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)