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29.12.2023
Court No. 3
I.Tudu
(p.a)

CO 4559 of 2023

Manosh Patra
Vs.
Sushila Jain & Anr.

Mr. Jishnu Saha, Sr. Adv.,
Mr. Satarup Banerjee,
Mr. Jitendra Patnaik,
Mr. Dibanath Dey.
... for the Petitioner.

Mr. Samrat Mukherjee.
... For the Respondent no.2

Ms. Manju Bhuteria,
Mr. Rahul Poddar,
Ms. Pooja Jewrajka,
Ms. Arundhati Barman.
... for the opposite party no.1

The petitioner has challenged an order dated 21.12.2023 passed by the National Company Law Tribunal Kolkata Bench (Court I), in C.P (I.B) No. 139/KB/2022.

Mr. Saha Ld. Sr. Advocate representing the petitioner has stated that the impugned order is palpably illegal and does not conform with the relevant provision of the Insolvency and Bankruptcy Code (henceforth "Code"). He says that as such, the impugned order shall not be maintainable.

By referring to certain documents annexed with the present petition Mr. Saha, Ld. Sr. Advocate has firstly contended that the amount of rent as stands outstanding towards the present opposite party/landlord would not reach the threshold limit at provided under Section 4 of the said Code.

Mr. Saha, Ld. Sr. Advocate has referred to the provision under Section 10A of the Code to submit that by promulgating the above stated provision, by way of an amendment of the year 2020, the Code has put a complete bar to a claim as envisaged in this case. He says that for any default arising on or after 25th March, 2020, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, in accordance with the said amended provisions of the Code. With reference to the relevant document, he shows that the default period, as claimed by the present opposite party pertains to the time period, when initiation of a process is prohibited under the said Code.

Mr. Saha is also optimistic about a favourable decision by the "committee of creditors" so that the provisions under Section 12A of the said Code, may be undertaken, for withdrawal of the application pending before the Tribunal. He submits that his client is agreeable to deposit with whatever authority this Court may direct, the sum of defalcated rent amount. Under these circumstances, he says, that unless and until the further consequential proceedings pursuant to the said impugned order, is stayed, the same shall cause serious prejudice to his client.

Ms. Bhuteria is representing the opposite party. The principle point in contrast of the petitioner's case by the opposite party is with regard to the availability of alternative remedy to the petitioner by way of a statutory appeal. Ms. Bhuteria has further submitted that the arguments made regarding the due and claimed amount not to have reached the threshold limit, as per Code, is only misconceived in so far as the impugned order itself is fairly explicit about the amount of rent payable by the present petitioner as a tenant to the opposite party/landlord.

Ms. Bhuteria has contended that the present revision under Article 227 of the Constitution of India be dismissed being not maintainable in law as well as in view of the factual aspects of the case.

On perusal of the materials on record it appears that the principle amount of defalcated rent, bereft of any other add-ons as interest or damages etc. would be Rs. 96,36,291/-. Thus the submission made on behalf of the petitioner primarily appears to be acceptable as regards the non-maintainability of the findings of the Tribunal in the impugned order. However, this Court is of the opinion that the petitioner, instead of pursuing the alternative remedy by way of moving this Court in an application under Article 227 of the Constitution of India, should persue the statutory remedy of appeal, to challenge the impugned order.

Under such circumstances this revision is disposed of with the direction that the petitioner is given liberty to move the Tribunal on the reopening day after the winter vacation or any day thereafter as the business of the Tribunal permits. Let there be an order of stay as regards all processes pursuant and consequent to the impugned order dated 21.12.2023 passed by the Tribunal, till the next date when the Tribunal takes up this matter for hearing. The petitioner is directed to submit the amount of outstanding rent to the tune of Rs. 96,36,291/- with the Registrar of the Tribunal.

It is made clear that the Tribunal shall be at liberty to suitably deal with the point whether or not to grant any extension to the order of stay as above as regards the consequential proceedings pursuant to the impugned order dated 21.12.2023, without being influenced by any of the observations or decision of this Court. Needless also to mention that while dealing with the appeal the Tribunal shall not be influenced by any of the observations made in this order, which are made for the limited purpose to disposing off the present revision. With the directions as above C.O. 4559 of 2023 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)