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27.06.2023
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 1153 of 2023
With
IA No. C.A.N. 1 of 2023

Ma Sarada Residency Pvt. Ltd. & Ors.
Vs.
Indian Bank, Zonal Office Siliguri & Ors.

Ms. Kum Kum Mukherjee
...for the petitioners

Mr. Sudipto Mazumdar,
Mr. Saptak Sarkar
...for the respondent no. 3

At the outset, it is pointed out by the learned Senior Advocate appearing for the respondent no. 3 that the said respondent, being THE Tribunal itself, is an unnecessary party and ought to be expunged.

Upon hearing learned counsel for the petitioners *prima facie* and perusing the allegations made in the writ petition, I do not find any specific personal allegation against the Presiding Officer of the Debts Recovery Tribunal.

As such, the name of the respondent no. 3 be expunged.

Learned advocate-on-record for the petitioners shall carry out necessary consequential amendments in the cause title of the writ petition during the course of the day.

Despite service, none appears for the respondent nos. 1 and 2.

From the document annexed as annexure-A at page 5 of the supplementary affidavit filed on behalf of the petitioner no. 1 in connection with the present writ petition, it is seen that as per the compromise petition filed by the petitioners and the bank, the petitioners agreed to settle the dues to the bank at Rs.1.5 crore. Since Rs.10 lakh out of the same had already been deposited by the borrower, the balance amount of Rs.1.4 crore was to be deposited by the borrower as per the terms of the compromise.

In Clause 2(a), it was agreed that a cheque of Rs.5 lakh was tendered by the applicant on May 30, 2023 to the defendant-bank.

As per sub-clause (b) of the said clause, the balance amount of Rs.1.35 crore was to be paid by the borrower to the bank in monthly installments of Rs.15 lakh per month, payable on the 30th of every month.

Sub-clause (3) of Clause 2 stipulated that the applicant had also agreed to return the possession of the mortgaged property situated at Mouza-Bhimram within seven days. In the next sub-paragraph after Clause 2(c), it was mentioned that "at the time of making signature both official betrayed" and submitted that the bank will return the possession after receiving full payment of Rs.140 lakh within three months, to which the borrower agreed.

It was further recorded that pending payment of the settled amount as per terms stipulated therein, the applicant bank's charge on the securities mentioned in the application shall remain enforced and the applicant bank's charge would be vacated after making payment of full settled dues in terms of the compromise.

Clause 4 of the same indicated that in the event in default of payment of any part of the settled amount and/or part of any installment as stipulated thereinabove, the course of action, as stipulated therein, would be followed.

The said application was signed not only by the officials of the bank but also the applicants/petitioners.

The sub-paragrph immediately after Clause 2(c) of the compromise petition evokes suspicion. It is, strangely, written therein that at the time of making signature "both official betrayed and submitted that the bank will return the possession after receiving full payment of Rs.140 lakhs within three months". It is rather peculiar that the bank agreed to sign such a document, containing specific aspersions against the bank officials.

Not only that, in the latter part of the same sentence, it was also recorded that the borrower had agreed to the term that the possession would be returned only after the bank receiving full payment of Rs.140 lakh.

Thus, the said conundrum requires that the petitioners approach the concerned Lok Adalat, which had passed the order, since it is well-settled that if any allegation is made regarding the factual happenings which took place at the relevant juncture before a particular forum, the parties are required to move the same forum, preferably the same officer who was in charge of the forum at the relevant juncture, to have such matter resolved.

Hence, if the petitioner alleges on the basis of the compromise petition that the bank resiled from the original agreement and postponed the handing over of possession till the payment of the last instalment, it is for the petitioner to ventilate such erroneous recording of compromise before the Lok Adalat itself.

Without having such compromise amended, the petitioner is bound by the stipulation therein that the possession of the property will only be handed over only after payment of the last instalment.

As the factual dispute raised by the petitioner can only be remedied in an illusory manner by this Court, as the facts took place entirely before the concerned Lok Adalat, it is open to the petitioners to approach the concerned Lok Adalat with the allegations as made herein.

However, in the event the petitioners fail to prove that there was actually any “betrayal” on the part of the bank officials and/or any fraud or misrepresentation was perpetrated upon the petitioners, it would not lie in the mouth of the petitioners/borrowers to seek a modification of the agreed terms between the parties, as it is also enumerated in the relevant clause of the compromise petition that the borrower had agreed to the possession of the hotel being returned upon payment of Rs.140 lakhs.

In any event, it is seen that although the petitioners allege that the property-in-question is a running hotel, in the absence of any further material, it is beyond the scope of the Writ Court to decide such factual question without taking any evidence on such score.

As such, W.P.A. No. 1153 of 2023 is disposed of by granting liberty to the petitioners to approach the concerned Lok Adalat, which passed the compromise order between the parties, challenging their consent to the relevant clause pertaining to handing over possession and suitable amendment in the compromise order accordingly.

In the event the petitioners so approach, the concerned forum shall decide all issues involved without being unduly influenced by any of the observations made herein, independently and in accordance with law, upon giving opportunity of hearing to both sides.

C.A.N. 1 of 2023 is disposed of accordingly.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)