OD-12

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/303/2015

THE PEERLESS TEA & INDUSTRIES LTD.
VS
INDIAN BANK AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date :18th May, 2023

Appearance:
Mr. Deepnath Roy Chowdhury, Adv.
Mr. Debdeep Sinha, Adv.
Mr. Bhaskar Dwivedi, Adv.
...For the Petitioner

Mr. Om Narayan Rai, Adv.
Mr. Piyas Chowdhury, Adv.
...For the Respondent

The Court: Affidavit-in-opposition to the supplementary affidavit filed by the respondent is kept in record.

Learned Counsel for the petitioner places his reliance on a supplementary affidavit filed in Court to indicate that there are several documents and payment receipts of taxes, revenue etc. which indicate that the petitioner is the owner of the property. It is further submitted that despite several directions of the Court, the Allahabad Bank, which is the original bank with which the property was mortgaged, has failed to obtain certified copies and/or hand over the original title deed which were deposited by the petitioner with the bank.

Learned Counsel appearing for the respondent-bank places his reliance on the annexures to the affidavit-in-opposition of the bank to indicate that the present writ petitioner had itself taken a specific stand that on or about January 1, 1995, the concerned Tea Estate, namely, Fatickchera Tea Estate was transferred by the writ petitioner to one Kamala Tea Company Limited. It is submitted, by further placing reliance on extracts of land revenue records of Tripura, that the said Tea Estate has also been recorded in the name of Kamala Tea Company Limited. As such, it is argued that the petitioner does not have any *locus standi* as of today to prefer the writ petition, claiming either the title deed or compensation in lieu of non-production of such title deed by the bank.

Learned Counsel appearing for the petitioner controverts such submission and places reliance on two previous orders passed by co-ordinate benches in connection with the present writ petition. In the first order dated April 29, 2015, it is pointed out, the Court had clearly observed that the respondent bank has not returned the original deed pertaining to the said Tea Estate to the petitioner. It was further observed by the learned Single Judge that it was an unfortunate situation and the learned Advocate for the petitioner was apprehensive that if the original deed was not returned, the writ petitioner's title deed to the said Tea Estate would remain defective.

In the subsequent order dated August 17, 2015, the same learned Single Judge, upon hearing both sides, was also pleased to record that the respondent-bank was to take necessary steps for obtaining a certified copy of the title deed pertaining to the Tea Estate concerned and after obtaining the same, to make over such certified copy to the writ petitioner.

Hence, it is argued that there is no scope of re-opening the issue at the present juncture, at the final stage of hearing.

Learned Counsel for the petitioner also relies on the affidavit-in-reply filed by the petitioner in such context and submits that in paragraph No.5 of the same, the petitioner categorically denied that it had admittedly transferred the tea estate to Kamala Tea Company Limited and that the writ petitioner no longer owns the Fatickchera Tea Estate as alleged or at all.

It was further averred in the said paragraph that the respondent-bank has prevented the petitioner from transferring Fatickchera Tea Estate and/or has affected the marketable title of the said Tea Garden by reason of non-return of the original title deed.

By placing reliance on such averment and argument, it is contended by the petitioner that the previous averment of transfer in favour of Kamala Tea Company, has to be read in the perspective of the subsequent document of payment of revenue by the present petitioner and the subsequent averments in the reply of the writ petition.

Upon hearing learned Counsel for the parties, it is seen that no final adjudication was made in the orders passed by the co-ordinate Bench, which have been relied on by learned Counsel for the petitioner. In the order dated April 29, 2015, affidavits were directed at an inchoate stage of the matter. The learned Single Judge had narrated the case of the parties and had directed affidavits to be filed.

Insofar as the subsequent order dated August 17, 2015 is concerned, the bank, through its counsel, had specifically submitted that the writ petitioner had no *locus standi* to maintain the writ petition, since it appeared that the Fatickchera Tea Estate had been transferred by the writ petitioner to one Kamala Tea Company Limited. Of course, the factum of such transfer of the Tea Estate was opposed by the learned Senior Advocate appearing for the writ petitioner, who submitted that although such transfer had been contemplated, the same could not be carried through because the original deed pertaining to the

Fatickchera Tea Estate was not available. The learned Single Judge observed, after hearing learned Counsel for the parties and going through the writ petition, that there was a real problem in hand. It was further observed that the original deed pertaining to the Tea Estate cannot be traced out. In the opinion of the learned Single Judge, since undisputedly the writ petitioner deposited the title deed with the predecessor-in-interest of the respondent-bank, it was the duty and obligation of the bank to return the original deed, which cannot be located.

Upon a careful perusal of the said two orders, it is seen that although certain observations were made by the learned Single Judge, the averments made by the present petitioner in its objection before the concerned Debts Recovery Tribunal were not placed before the learned Single Judge and/or considered while making observations in the order dated August 17, 2015. It was the mere submissions from the bar that were considered at that juncture, when the writ petition was still pending and the matter had ultimately been directed to be listed subsequently for orders.

However, at the stage of final hearing of the writ petition, such finding *per se* cannot operate as res judicata.

At the stage of hearing, it is the charter of the Court to look into all documents and pleadings of the parties and to arrive at independent findings on the basis of materials on record and arguments made by the parties. The affidavit-in-opposition of the bank and one of the annexures thereto clearly indicates that the present writ petitioner, in an application under Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1999, had categorically admitted that, on or about 1-1-1995, Fatickchera Tea Estate was transferred by the defendant No.1/petitioner to Kamala Tea Company Limited. It was further reiterated that transfer of the said Tea Estate by the petitioner to the said Kamala Tea Company Limited would inter alia appear from certain letters which were referred to in the said paragraph. Again, in the written objection used by the defendant No.1/present petitioner in OA case No.196 of 1999, it was categorically averred by the petitioner in Clause 4 (h) that the bank (Applicant therein) was fully aware of the fact that the Fatickchera Tea Estate was already transferred and the same was no longer in the control, management and administration of the defendant No.1/present petitioner.

Again, in paragraph-7 of the same opposition, it was reiterated by the defendant No.1/petitioner that since it was no longer in control, management and administration of business of the Tea Estate, the question of payment of proceeds of Teas to the bank and/or of there being any hypothecation of teas in favour of the bank did not and could not arise.

Even in extracts of the documents of the Revenue sub division Mohanpur in the Revenue District of West Tripura, a copy of which has been annexed at page 65 of the opposition of the bank in the present writ petition, Item No.5 clearly indicates that Fatickchera Tea Estate had Kamala Tea Company recorded as its owner.

In its reply, the present petitioner has sought to refute such contentions only by denying the same and stating that the respondent-bank had prevented the petitioner from transferring the Tea Estate in question and /or had affected the marketable title of the Tea Garden by reasons of non-return of the original deed.

However, the submission made by the Counsel on behalf of the bank on August 17, 2015, before the Writ Court through Counsel as well as the statement made in paragraph- 5 of the reply of the petitioners are patently contrary to the stand taken categorically by the petitioner in its earlier pleadings before the Debts Recovery Tribunal.

Since the said averments before the Tribunal were earlier on point of time, the presumption is that those, having been accepted and acted upon by the DRT, were correct, unless clearly rebutted by subsequent evidence to show that those were incorrect.

A mere bald statement subsequently made in a reply to the writ petition, which was itself filed much subsequent to the proceeding before the DRT, and submission made through Counsel cannot rectify such situation for the petitioner.

In fact, the corroborative evidence appearing from the materials on record, as discussed above, clearly shows that the petitioner did not and does not have any *locus standi*, after its admitted transfer of the Fatickchera Tea Estate in favour of the one Kamala Tea Company Limited on January 1, 1995, to stake any claim to return of the documents and/or any compensation, as indicated by the petitioner through counsel, in that regard.

Hence, the entire exercise undertaken throughout in connection with the writ petition now appears to be futile. In view of the petitioner not having *locus standi* to prefer the present writ petition from the inception of the writ petition itself, the present matter does not justify any positive result for the petitioner.

However, it is made clear that nothing in this order shall bind any non-party to the present writ petition and if Kamala Tea Company Limited asserts its right independently, the said entity would not be debarred from doing so by virtue of any of the observations made herein.

Accordingly, WPO/303/2015, along with connected applications, if any, are dismissed on contest without any order as to costs.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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