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WPO/798/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

PITTI TRADING COMPANY AND ORS.
VS
AUTHORIZED OFFICER, PUNJAB NATIONAL BANK AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 5th July, 2023.

Appearance:
Mr. Gopal Pitti, appears in person
For the petitioner.

Mr. Pankaj Kumar Mukherjee, Adv.
. . .for the respondent nos.1 & 2.

The Court: The petitioner, appearing in person with leave of Court, submits that a patent jurisdictional error has been committed in holding an auction sale regarding the property of the petitioner by the respondent bank inasmuch as the provisions of the SARFAESI Act, 2002 are not applicable at all to the petitioner. The petitioner places reliance on the provisions of Section 26D of the 2002 Act, which stipulates that notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of the said Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III of the Act, unless the security interest created in its favour by the borrower has been registered with the Central Registry.

The petitioner places reliance on the documents annexed to the writ petition indicating that there were patent defects in the registration, effected with the Central Registry regarding the property in question. By placing reliance on the relevant extract from the same, annexed at page 153 of the writ petition, the petitioner argues that an extremely vague description has been given of the property and the Pin Code given therein is also erroneous and does not pertain to the property of the petitioner; as such, it is submitted that the provisions of Section 26D were not complied with, as there was no proper registration with the Central Registry regarding the present loan.

The petitioner seeks to place reliance on several documents of the Supreme Court as well as several High Courts on the issue that if the provisions of the 2002 Act are not complied with by the bank, it is well within the jurisdiction of the writ court to interfere in such matters.

The petitioner further contends that although an application under Section 17 has been taken out before the concerned Tribunal, the same pertains to different issues and, as such, the present writ petition is not debarred on such premise.

The petitioner contends that no notice under Section 13(4) of the 2002 Act was given to the petitioner, thereby vitiating the entire subsequent action taken by the respondent bank in so far as the auction sale is concerned. As such, it is argued that the sale itself ought to be set aside.

Learned counsel appearing for the bank controverts the submissions of the petitioner and submits that already a suit before a civil court, as well as an application before the Tribunal, have been preferred by the petitioner. The petitioner has not pressed any prayer for interim order in connection with the said proceeding before the Tribunal. As such, the present writ petition on the self-same cause of action is not maintainable.

To such arguments, the petitioner contends that the reliefs sought in the suit as well as the proceeding before the Tribunal are distinct and different from the present writ petition.

A perusal of the prayers made in the present writ petition indicates that the challenge of the petitioner pertains to disbursal of pre-approved GECL or ECLGS facility announced by MOF and extended till March 31, 2023, release of the full limit/drawing, to the tune of Rs.50 lakh, by restoring the limit, direction upon the respondent bank to declare the sanction dated May 27, 2013 void ab initio and a challenge to the registration of properties via deed no I-190404265 for the year 2022, quashing of which has also been sought.

A perusal of the reliefs claimed in the suit, as quoted in an order passed by the Civil Court, which is an annexure to the present writ petition, shows that the first relief sought therein is an order of mandatory injunction directing the defendant bank, competent authority and SASTRA Department to withdraw the demand notice issued vide no. CS/KOL north 8266/310/2021-22 upon the borrower and CS/KOL north 8266/311/2021-22 upon the guarantor. That apart, a mandatory injunction directing the defendant bank to sanction GECL loan as extended up to March 31, 2023 and a further mandatory injunction directing the defendant bank to re-structure the present facility have also been sought.

Insofar as the reliefs claimed before the Tribunal are concerned, it is evident from a copy of the said application handed over by learned counsel for the respondent that the primary relief was a declaration that the notice dated July 2, 2021 impugned therein, issued under Section 13(2) of the SARFAESI Act, sale notice dated January 19, 2022, sale held on February 28, 2022, sale certificate dated March 4, 2022 and deed of conveyance dated March 22, 2022 are illegal and wrongful, since the classification of the account as NPA on March 31, 2021 is bad and all subsequent auctions taken are invalid, illegal and in gross violation of the provisions of the Act and Rules, 2002. A cancellation of the deed executed on March 22, 2022 has also, inter alia, been prayed for, along with a direction to restore possession of the property to the petitioner under Section 17(4) of the 2002 Act.

The challenge thrown in the present writ petition is intrinsically and inextricably connected with the relief sought before the Tribunal as well as in the suit before the civil court. It was open to the petitioner to obtain an interim order, if the petitioner so intended, since the application before the Tribunal was filed long back last year. Hence, the present endeavour to take out the writ petition, presenting the self-same challenge, couched in a different language, is patently mala fide and is deprecated.

Since the petitioner already has a remedy before the Tribunal, which has been invoked by him some time ago, where all the points agitated in the writ petition can/could very well be canvassed, there is no scope of entertaining the writ petition or interference in the present writ petition.

Accordingly, WPO No.798 of 2023 is dismissed without any order as to costs. However, it is made clear that if the petitioner makes future endeavours of similar nature, to multiply litigation unnecessarily, drastic action may be taken against the petitioner.

Urgent certified website copy of this order, if applied for, be made available to the parties, subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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