IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

(Commercial Division)

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

APOT 135 of 2022
with
AP 371 of 2021
IA GA 1 of 2022

Coronation Infrastructure Pvt. Ltd. & Ors.

Vs.
SREI Equipment Finance Limited

Appearance:

For the Petitioner : **Mr. Surajit Nath Mitra, Sr. Adv.**
Mr. Rupak Ghosh, Adv.
Mr. Vivek Basu, Adv.
Mr. Arnab Sardar, Adv.

For the Respondent : **Mr. Swatarup Banerjee, Adv.**
Mr. Paritosh Sinha, Adv.
Mr. Saubhik Choudhury, Adv.

Judgment On : **30.03.2023**

Harish Tandon, J.:

The defaulting litigant has filed the instant appeal assailing an order dated 18th July, 2022 passed by the Single Bench appointing receiver with the direction to immediately take possession of the assets, make an inventory and file report on the returnable date. Simultaneously, the Single Bench rejected the application being IA no GA 1 of 2021 holding that the security so offered by the appellant cannot be accepted or extended to the loans being the subject matter of the instant litigation.

The facts unfurled would reveal that the Appellant no. 1 being a mining contractor entered into several loan agreements with the respondents for acquiring diverse machines required for mining purposes. The aforesaid loan agreements involved schedule of payments by way of the installments on monthly basis keeping those assets /machines mortgaged in order to secure the loan amount. Admittedly, there is a default in making the payment in terms of the aforesaid loan agreements and a notice was issued by the respondent to cancel the aforesaid agreements by recalling the entire loan and calling upon the appellants to clear entire balance amounts within a stipulated time.

The genesis of the disputes arose from the aforesaid act of the respondents in recalling the loan and demanding the entire dues and the proceedings were initiated to protect the assets and the properties mortgaged with the respondent. Undisputedly, a sum of Rs. 6 crores have been deposited by the appellant in terms of the various orders passed in the proceedings and despite several opportunities having been given no further amount could be deposited to show the bona fide. The aforesaid observations would be fructified from the stand of the appellant in the various applications filed in the litigation and the order passed therein. However, the appellant took a stand that immoveable property situated at Mehrauli, Tehsil Mehrauli, New Delhi, comprising of 1.70 acres can be taken as a security or mortgage in connection with the aforesaid agreements to secure and protect the interest of the respondent and, therefore, the assets being the subject matter of the instant loan agreements should not be taken physical possession by the receiver as it would impede the mining activities and the functioning of the appellants.

Initially an order was passed on 18th November, 2021 by the Single Bench directing the receiver to take physical possession of the subject assets which was assailed by the appellant in APOT 199 of 2021. It was contended by the appellant that there is no intention to deprive the respondent of their dues and the immoveable property which is valued at more than 60 crores is sufficient enough to stand as a security for the claim of the respondent and, therefore, there is no necessity of appointing the receiver and taking physical possession thereof in respect of the assets covered under the said loan agreements. The said appeal came up on 14th December, 2021 and disposed of with the categorical observation that whether the said immoveable property is sufficient or not to stand as a security cannot be gone into by the Appellate Court in absence of sufficient evidence and an opportunity was given to the appellant to take out an appropriate application offering the security for the dues towards the respondent and in the event the said application is taken out the same would be decided on merit including the question whether the receiver should be directed to take the actual physical possession or not. It was further clarified that in absence of any order to the contrary the receiver will take physical possession of the assets as directed by the Single Bench after 14th December, 2021.

Pursuant to the aforesaid leave having granted by the Division Bench the appellant took out an application for mortgaging the said Meherauli property as security towards the subject loans upon recalling the order appointing receiver and the receiver may be directed to return the assets if already taken in possession thereof. By the impugned order the aforesaid application is dismissed and the instant appeal has been filed against the said order.

It is contended by the learned Advocate for the appellant that the immoveable property worth more than 60 crores has been offered by the appellant as security towards the dues and, therefore, there is no necessity of appointing the receiver and taking possession of the assets being the subject matter of the instant litigation. The Single Bench dismissed the said application on the score that the said Meherauli property had already been mortgaged under the other loan agreements and, therefore, such mortgaged property cannot be permitted to be remortgaged or extended to cover the loan amounts under the subject loan agreements. The Single Bench further found that several opportunities were given to the appellant to make a lumpsum payment of the dues that had fallen due yet no efforts have been shown in this regard and the security of the said immoveable property does not appear to be unencumbered.

The concept of creating a mortgage of a property is to secure the loan amount and a speedy recovery thereof in the event any default has occurred. It is intended to satisfy the wisdom of the commercial entities that the money advanced as a loan is sufficiently secured in the event any default occurred and capable of being realized from the mortgaged property. The value of the property may be one of the factors for the satisfaction of the lender that the money is secured and capable of being reimbursed. The moment the parties have consciously taken a decision to create a mortgage of an immoveable property towards securing the loan amount even if the value of the property is more than the amount advanced as a loan, it is not open to the borrower to extend the mortgage property to be included in other loan agreements as it fetches more value than the loan amount for which the mortgage was created.

The commercial wisdom is paramount and if the parties have consciously taken a decision and mortgaged the immoveable property to secure the loan amount under different loan agreements unless it is shown that the said agreements have been duly complied with and the loan amount has been disbursed resulting into a release of the mortgage, the Court cannot compel the contracting parties to accept the said mortgaged property to be remortgaged or extended to an other loan agreement. There is no evidence forthcoming that the loan agreements wherein the said immoveable property has been mortgaged have been duly satisfied upon payment of the entire amount in terms of the aforesaid loan agreements. The Court cannot rewrite an agreement nor can create a contract for the parties but must travel within the circumference of the contract and the terms and conditions mentioned therein being the subject matter of the litigation.

Undeniably, the Meherauli property is not free from any encumbrances as its is mortgaged with the respondent towards the security of the loan amount covered under the several other loan agreements and, therefore, cannot be said to be unencumbered. Admittedly there is a default committed by the appellant and the assets covered in the subject loan agreements is the only security available to the appellant and, therefore, we do not find any infirmity in the order of the Trial Court in appointing the receiver and directing the same to be taken possession of.

The appeal is thus dismissed.

The connected applications are also dismissed.

No costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree. **(Harish Tandon, J.)**

(Shampa Dutt (Paul), J.)