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WPO/1693/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S JALAN FARMS PRIVATE LIMITED AND ORS
VS
THE UNION BANK AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 16th November, 2023.

Appearance:
Mr. Arindam Banerjee, Adv.
Mr. Pranit Bag, Adv.
Mr. Ratul Poddar, Adv.
. . .for the petitioner.

Mr. Ranajit Chowdhury, Adv.
. . .for the respondent nos 1 & 2.

The Court: Learned counsel for the petitioner contends that the petitioner stakes a substantive claim in the property which was shown as the secured asset by the borrower-in-question for getting a loan. For non-repayment of such loan, the secured assets were put up on auction sale by the respondent bank, challenging which the present writ petition has been preferred. In the meantime, it is pointed out by the bank, the auction sale has gone through and a sale certificate has in fact been issued in favour of the successful purchaser. A copy of the sale certificate is handed over by the learned counsel of the bank and is kept on record.

It is contended by learned counsel for the petitioner that as a prospective participant in the e-auction sale, the petitioner has every right to point out the infirmity in the process of sale, primarily the violation of Rule 8.6 of the relevant rules.

It is argued that as per Rule 8.6 of the Security Interest (Enforcement) Rules, 2002, any encumbrance in the property has to be clearly disclosed in an auction sale notice which was not done by the bank. The pendency of two suits at the behest of the petitioner is sufficient encumbrance which was required to have been disclosed, non-disclosure of which clearly vitiates the process of sale. Learned counsel cites *S. Shanmuganathan versus The Authorized Officer Indian Overseas bank Asset Recovery Management Branch Canteen Block, First Floor, Central Office Buildings, No.763, Anna Salai, Chennai – 600 002* reported at 2017 SCC online Mad 1549 for the proposition that Rule 8(6)(a) and 8(6)(f) are mandatory in nature. The purchaser should be put on specific notice about all the encumbrances and other materials so as to enable him to take a conscious decision with regard to his participation in the auction and the amount to be quoted in his bid. The disclosure, it was held, is not an empty formality and the auction notification is defective and improper in case the encumbrances and known litigations are not disclosed.

Learned counsel also hands over a copy of the plaint of Title Suit no. 988 of 2022 pending before the Fourth Court of Civil Judge, Junior Division at Howrah initiated by the petitioners, where the bank is also a party, inter alia seeking the

relief that the charge and/or mortgaged created over the subject land in favour of the defendant no.3 therein is null and void.

Learned counsel next cites the judgment of *Debasree Das Vs. State of West Bengal & Ors.* reported at (2011) 1 CHN 10 wherein a Division Bench of this Court observed that where a citizen of India has been harassed and was dispossessed from his lawful property at the instance of a financial institution who had acquired no interest over the property in question so as to enable it to exercise power conferred under Section 13(4) of the SARFAESI Act, such a citizen is not required to go to the alternative remedy provided under section 17 of the Act.

Learned counsel for the petitioner next cites a judgment of a co-ordinate Bench of this Court in the case of *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.* reported at 2023 SCC online SC 95 where it was observed inter alia that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.

In the backdrop of the above judgments, this Court now considers the entertainability/maintainability of the writ petition. Learned counsel for the petitioner is justified in contending that there is no absolute bar to maintainability of a writ petition under certain circumstances, just because of availability of an alternative remedy.

The question is whether the Court will resort to a self-imposed restriction where an alternative remedy is not only available but has been availed of. The present question also revolves not only around entertainability but also the locus standi of the petitioner to prefer the instant challenge.

It is an admitted position that at least one suit is pending at the behest of the petitioner where the bank is also a party, challenging the very charge and/or mortgage created over the subject matter in favour of the bank; that, even not going into the pendency of yet another suit at the behest of the petitioner.

The petitioner has canvassed his title in the suit property, which is the plinth of the relief sought in the said suit.

In the event the petitioner is correct in submitting that the petitioner has a right to participate in the auction sale of the self-same property by the bank, which is on the basis of the self-same mortgage which is challenged in the suit by the petitioners themselves, the same will create an absurdity, unless the petitioners elect to abandon the relief claimed in the suit. In the said suit, the primary relief, based on the title of the petitioner in the property, revolves around the declaration that the mortgage created of the subject land is null and void. Hence, an abandonment of such relief will tantamount to the petitioner having the suit dismissed for non-prosecution which, conspicuously, the petitioner has chosen not to do till date.

On the other aspect of the matter, the petitioner, naturally, did not actually participate in the auction sale which was conducted by the bank and has now attained finality by issuance of the sale certificate.

Hence, theoretical conjecture on what could have happened if the petitioner had participated in the auction sale carries no present meaning apart from being an academic discussion.

In any event, as discussed above, the petitioner would have to compromise on the entire claim made in the suit, which is still pending, in order to enable the petitioner to have participated in the auction sale. That apart, the petitioners obviously have had full knowledge of the pendency of their own suit which is the encumbrance as claimed to attract the provisions of Rule 8(6). Since the petitioners themselves had knowledge of the same, the petitioners do not have the locus standi to urge that non disclosure of such 'encumbrance' of litigation could vitiate the auction sale in so far as the petitioner concerned.

Hence, the petitioners do not have locus standi to prefer the present writ petition at all, being not affected, also since the petitioners did not participate in the auction sale at all.

That apart, the petitioners have prayed for an interim relief of the injunction as well as the final relief to the tune of injunction in the suit which has been discussed above restraining the defendants, including the bank and its men and agents, from dealing with any part or portion of the suit property, which is actually the secured asset of the bank. Having failed to obtain such an injunction, the petitioner cannot resort to the present writ petition to get indirectly what it could not get directly.

A certain distinction has been sought to be drawn, and ingeniously too, by learned counsel for the petitioners between the personal right of the petitioners

with regard to the claims made in the suit and the rights of the petitioners as citizens in general to bring to the notice of the writ court the flouting of Rule 8(6) by the bank in the auction process. However, the interest of the petitioners conflict in such respect since the claim of the petitioners to the property and the claim of the petitioners as prospective participants in the auction sale clash and are mutually exclusive and it cannot be said that the subtle distinction sought to be carved out by the petitioner has any germane effect on the present adjudication.

In such view of the matter and also keeping in view the fact that the sale certificate has already been issued pursuant to the auction sale which was sought to be challenged in the writ petition, this Court chooses not to entertain the writ petition on the ground of non-entertainability at the behest of the petitioner as well as lack of locus standi of the petitioner.

Hence, WPO 1693 of 2023 is dismissed on the grounds as indicated above.

No order as to costs.

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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