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29.02.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5982 of 2024

Sk. Asfaruddin
Vs.
The State of West Bengal & Ors.

Mr. Samarajit Roy Choudhury,
Mr. Ajit Kumar Mishra,
Mr. Abhishek Dey,
Mr. Suprovat Banerjee,
Mr. Kushagra Maskara
...for the petitioner

Mr. Shiv Mangal Singh
...for the respondent nos. 1 and 2

Ms. Munmun Ganguly,
Ms. Ashmita Chakraborty
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner claims to be one of the heirs of the deceased borrower, one Sk. Abu Hossain.
3. It is contended that after the demise of Sk. Abu Hossain in 2015, the fact of such death was informed to the Bank by some of the successors of Late Abu Hossain in 2016.
4. However, despite the same, without any notice to the successors of Sk. Abu Hossain, in particular the petitioner, the Bank proceeded with an auction sale and the petitioner recently came to know that apparently possession was taken by the Bank,

which transpires from a *Panchnama* and inventory issued under Rules 4(1) and 4(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, on November 01, 2018.

5. To the utter shock of the petitioner, it is submitted, the petitioner learnt that possession of the property was sought to be taken by the police on the strength of orders of this Court.

6. Upon growing aware of the same, the petitioner immediately rushed to the Tribunal with an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and asked for injunction there. The Tribunal, by the impugned order dated February 26, 2024, refused to grant injunction only on the premise that this Court had directed possession to be handed over to the auction purchaser through police help.

7. Learned counsel for the Bank controverts the submissions of the petitioner and contends that even as per the petitioner, possession had been taken on November 01, 2018 by the Bank. Thereafter, it is alleged, the Bank was unlawfully dispossessed by the successors of the borrower.

8. It is further argued that the petitioner does not have a right to stake claim to the property, since

the petitioner is claiming through the borrower, who already suffered the proceedings under Section 13(4) of the 2002 Act and, as such, the Tribunal rightly rejected his application for injunction. That apart, it is contended that the writ petition ought not be entertained in view of availability of an equally efficacious alternative remedy in the form of an appeal before the Appellate Tribunal.

9. Learned counsel for the Bank also points out that the application under Section 17 of the 2002 Act, filed by the petitioner, is not maintainable, which was recorded in the impugned order as well.

10. The application under Section 17 of the 2002 Act, it is contended, is palpably time-barred as well.

11. Learned counsel for the petitioner, in reply, places reliance on the annexure at page 73 of the writ petition, which indicates that on July 19, 2019 some “unauthorized persons” forcibly entered into the property dispossessing the security agency, for which a First Information Report was lodged.

12. Thus, it is disputed that the heirs of Sk. Abu Hossain dispossessed the Bank.

13. A perusal of the impugned order indicates that the manner in which the Tribunal proceeded with the adjudication is erroneous on account of the directions of this Court being in the nature of orders *in terrorem*. *Ipsa facto*, the direction of this

Court to hand over possession to the auction purchaser by police help could not be a deterrent for the Tribunal to decide the injunction prayer of the petitioner on merit.

14. However, it is also required to be ascertained whether the petitioner has a *prima facie* case in the first place.

15. Apart from the fact that the application under Section 17 of the 2002 Act of the petitioner has not yet been registered on the ground of maintainability, which precludes any interim order from being passed thereon by the Tribunal on merits, the fact remains that the petitioner claims through the borrower Sk. Abu Hossain, who had suffered during his lifetime the proceedings and measures under Section 13(4) of the 2002 Act, which could not be reopened at the behest of the borrower, even if he was alive, at this stage.

16. Thereafter, auction purchase took place and as evident from the Panchnama and inventory, there is sufficient and palpable evidence that possession was taken by Authorised Officer of the Bank on November 01, 2018.

17. Moreover, the petitioner seeks to urge that some third party outsiders had taken possession by dispossessing the Bank. In the event it was outsiders who had effected such dispossession, the

petitioner does not, in any event, have any locus standi to challenge the dispossession directed by this Court and/or the refusal of injunction regarding such possession.

18. In the event, however, the petitioner is in occupation of the property, the same has to be *ex facie* unlawful, since as evident from the records, the Bank had taken possession on November 01, 2018 and by virtue of Section 114 of the Evidence Act, presumption of correctness and due process has to be attached to official acts, unless rebutted.

19. Even from another perspective, the petitioner claims through the borrower and cannot claim a better title than the borrower or a better right.

20. Since it has been observed above that the borrower Sk. Abu Hossain, since deceased, would himself not have any right at this juncture, after suffering the action under the 2002 Act, to reopen the entire issue by filing a Section 17 application, the petitioner, stepping into the shoes as successor of the said borrower, cannot have a better claim.

21. In such view of the matter, although the ground on which the injunction application was refused by the Tribunal cannot be fully supported, the conclusion arrived at by the Tribunal in refusing injunction to the petitioner is fully justified on the reasons supplied above.

22. In such view of the matter, there is no scope of interference with the impugned order.

23. W.P.A. No. 5982 of 2024 is accordingly dismissed without, however, any order as to costs.

24. 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.