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17.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9441 of 2024
with
I.A. No. C.A.N. 1 of 2024

Somenath Dey
Vs.
The State of West Bengal & Ors.

Mr. Victor Chatterjee,
Ms. Pampa Dey Dhabal,
Mr. Krishna Deo Das,
Ms. Sangita Banerjee
... for the petitioner

Mr. Jahar Datta,
Mr. Bipin Ghosh
...for the State

Mr. Suddhasatva Banerjee,
Mr. Sannidhya Datta,
Mr. Abhijit Sarkar,
Mr. Abhik Chitta Kundu
...for the respondent nos. 4 to 6

Mr. Himangshu Ghosh,
Mr. Hemanta Kumar Das
...for the respondent no. 7

1. Learned counsel for the petitioner, in support of his application for stay, argues that the notice of auction sale annexed at page 9 of the application as well as the auction sale itself is void/invalid in view of non-compliance of Section 32 of the State Financial Corporation Act, 1951.

2. It is contended that Section 32 of 1951 Act contemplates an application before the District

Judge and an order to be passed by the District Judge prior to the Financial Corporation proceeding with the measures contemplated under Section 31. Section 31 of the 1951 Act includes sale of the property/pledged/mortgaged/ hypothecated/assigned to the financial corporation as security for the loan or advance. It is argued that in the present case such procedures having not been complied with by the respondent/Financial Corporation, the entire auction sale is vitiated and ought to be struck down.

3. Learned counsel appearing for the respondent/Financial Corporation points out that the provisions of Section 31 and consequentially Section 32 are without prejudice to the provisions of Section 29 of the 1951 Act.

4. It is argued that the two sections, that is, Sections 29 and 31, operate in independent and different spheres. Hence, the premise of the challenge is not tenable in law.

5. Insofar as the "notice for Natural Justice" dated April 05, 2024 annexed at page 9 of the application is concerned, the same was given for abundant caution to enable the petitioner to match the price which the Financial Corporation has been able to obtain in the auction process.

6. A careful scrutiny of Sections 29, 31 and 32 of the 1951 Act substantiate the contentions of the respondent/Financial Corporation.

7. Section 31 clearly contains a rider that the said provision is without prejudice to the provisions of Section 29 of the Act and of Section 69 of the Transfer of Property Act.

8. Section 29 confers power on the Financial Institution, where any industrial concern which is under a liability under an agreement to the Financial Corporation makes any default in repayment of any loan or advance or any installment thereof or otherwise fails to comply with the terms of the agreement with the Financial Corporation, to have the right to take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realize the property pledged/mortgaged/hypothecated/assigned to the Financial Corporation.

9. In the present case, admittedly, a notice was issued under Section 29 of the Act by the Financial Corporation, which has not been assailed.

10. Thus, the procedure in the present auction was entirely under Section 29 of the Act.

11. Apart from the stipulation in Section 31 that it is “without prejudice to the provisions of Section 29”, a bare perusal of the respective scopes of

operation of the two sections makes it abundantly clear that the two have independent purposes.

12. Whereas Section 29 deals with default in repayment of loan or advance or installment and failure to comply with the terms of the agreement in such context, Section 31 deals with breach of an agreement and/or in meeting with the obligations of an industrial concern in relation to any guarantee given by the Corporation and/or failure to comply with the terms of the agreement.

13. Whereas Section 29 is in respect of default in repayment of the loan amount simpliciter, Section 31, as a *sine qua non* of applicability, requires a breach of an agreement which requires a scrutiny by the District Judge, obviously to ascertain whether in the first place there was any breach or not.

14. As opposed to the same, in a Section 29 scenario, there is a clear default in repayment of the loan/meeting financial obligation on the part of the industrial concern to the Financial Corporation.

15. Since Section 32 merely stipulates the procedure to be adopted in a case where Section 31 operates, Section 32 has to be read in conjunction with Section 31, which is independent of the procedure adopted by a Financial Corporation under Section 29.

16. The present case is one covered by Section 29, as the petitioner failed to meet his financial obligations and repay the loans taken from the Financial Corporation and, as such, Section 32 is not attracted at all, thereby vitiating the premise of the petitioner's arguments.

17. In such view of the matter, there being no prima facie case made out, C.A.N. 1 of 2024 is dismissed.

18. In view of the above observations, there is no prima facie case in respect of the writ petition and, as such, there is no reason why the writ petition should be kept pending and/or entertained.

19. According, W.P.A. No. 9441 of 2024 is also dismissed on contest without any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)