16.05.2024
Item No.29
RP
Ct. No.1

MAT 809 of 2024
+
IA No.CAN 1 of 2024
Debasish Bosu Roy Chowdhury
Vs.
Union of India & Ors.

Mr. D. Samanta
..... for the Appellant

Ms. Niharika Singh
Mr. A.K. Singh
..... for Respondent Nos.3 & 4

1. This intra-Court appeal is directed against the order dated 10th April, 2024 passed in WPA 1686 of 2024. The appellant filed the said writ petition praying for a direction upon the respondent bank to deliver the vehicle/bus bearing registration no.WB-05-1666 in a running condition and also pay damages to the extent of Rs.10/- lacs for the period with effect from the date of payment of the OTS money towards liquidation of the loan money by the appellant in favour of the 3rd respondent/bank, a nationalized bank until the date of delivery of physical possession of the vehicle in the running condition. The learned writ Court though made certain observations which would enure in favour of the appellant/writ petitioner but ultimately held that the appellant has to approach the civil Court for claiming damages. The hard facts of the case on hand desist us from agreeing with the ultimate conclusion arrived at by the learned Single Bench. We substantiate the same by the following reasons.

a) The appellant availed the term loan from the respondent nationalized bank for the purpose of purchase of a vehicle, which was a new bus, to ply in the route nos.37, 37A in Kolkata.

b) Upon satisfaction of the credentials of the appellant the respondent bank sanctioned a term loan of Rs.15,15,000/- to be repaid along with interest in 84 equated monthly installments of Rs.26,502/- commencing from December 2014. The vehicle in question was hypothecated to the respondent bank.

c) The respondent bank would state that from January 2018 i.e. after four years after the loan was sanctioned the appellant started defaulting in payment of equated monthly installment and the account of the appellant/petitioner was declared a Non-Performing Asset on 31st May, 2018 and the outstanding amount of loan as on date of NPA stood at Rs.10,23,152.23.

d) In the copy of the affidavit-in-opposition filed in the writ petition the respondent bank would admit that the market value of the vehicle as on 31.07.2019 was only Rs.2.37 lakhs and distress sale value was only Rs.1.66 lakhs only.

e) In March 2021 the appellant/petitioner approached the respondent bank for One Time Settlement of Rs.1.8 lakhs towards the entire outstanding and they would state that being a public sector bank they agreed to the proposal to accept the One Time Settlement offer though it was only 17.75% of the outstanding dues.

f) On 19th March, 2021 the appellant was intimated about the decision of the respondent bank to accept the One Time Settlement. Though the above facts would give an impression that the seized vehicle was in the possession of the respondent bank, in paragraph 8(h) it has been stated by the respondent bank that the vehicle was in the custody of the respondent no.5, who is undoubtedly the agent of the respondent bank, who probably effected the seizure operation.

g) It is the responsibility of the respondent bank to return the seized vehicle to the appellant/borrower upon One Time Settlement amount being accepted, this did not happen and the vehicle was not returned to the appellant. The appellant had approached various forums and FIR was registered at the instance of the bank before Ghola Police Station, Sodepur and it appears that the said case is still pending. However, the appellant has not got any relief till date.

h) The respondent bank having possessed the hypothecated property was bound to return the same to the appellant, who was the owner of the asset since the bank has accepted the OTS proposal

i) The OTS amount has been fully remitted to the respondent bank.

2. Thus, considering the peculiar facts of the case, we are of the view that a slight modification should be done to the direction and observation made by the learned Single Bench while disposing of the writ petition. As admitted by the respondent bank that the market value of the seized vehicle on 31.07.2019 was only Rs.2.37 lakhs, we are not concerned about the distress value of the vehicle. We are of the view that the respondent bank should compensate the appellant and the amount to be fixed by this

Court will be an ad hoc compensation and liberty will be given to the appellant to approach the civil Court for further compensation if he so desires. Accordingly, the respondent bank is directed to pay a sum of Rs.5,00,000/- to the appellant for its conduct in not returning the vehicle to the appellant and liberty is given to the appellant for higher compensation before the competent civil Court.

3. With the above observations and directions, the appeal and the connected application are allowed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)