

D/L.8 with 9.
April 10, 2024.
MNS.

WPA No. 1141 of 2024

Subhashis Shil
Vs.
Punjab National Bank and others

With

WPA No. 24765 of 2023
Uttara Sikdar
Vs.
Punjab National Bank and others

Mr. Uttiya Ray,
Mr. Arnab Mandal

... for the petitioner
in WPA 1141 of 2024.

Mr. Narayan Chandra Debnath,
Mr. Saumyajit Ghoshal,
Mr. Saswata Chatterjee,
Ms. Tanima Debnath

...for the petitioner
in WPA 24765 of 2023.
&
respondent nos. 4 to 6
in WPA 1141 of 2024.

Mrs. Parna Roy Choudhury

...for the PNB in both the matters.

Mrs. Mousumi Choudhury,
Mr. Sayan Datta

...for the State
in WPA 1141 of 2024.

Mr. Amal Kumar Sen, AGP.,
Mr. Lal Mohan Basu

...for the State
in WPA No. 24765 of 2023.

1. The present two writ petitions arise out of the same context.
2. The petitioner in WPA 1141 of 2024 is an auction purchaser, who purchased the disputed property by way of an auction sale held by the respondent-bank. Despite a sale certificate having been issued in favour of the petitioner, the petitioner cannot yet get the possession due to resistance by one of the co-borrowers.
3. It is contended that the District Magistrate already passed an order on the application made under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act), but the same could not yet be implemented. Such implementation has been sought in the said writ petition.
4. On the other hand, WPA No. 24765 of 2023 has been preferred by one of the co-borrowers.
5. The ground of challenge to the order passed under Section 14 of the 2002 Act in the said writ petition is that the same was a nullity. It is contended that one of the borrowers had met his demise as long back as in the year 2020. However, despite the point having been brought to the notice of the Debts Recovery

Tribunal, the Tribunal dismissed the application of the writ petitioner.

6. It is submitted that the death of one of the co-borrowers vitiates the entire procedure and the subsequent order under Section 14 of the 2002 Act, being a nullity.
7. It is argued that the surviving co-borrower, who is the petitioner before this Court, cannot suffer for such illegal action on the part of the respondent-bank.
8. Learned counsel for the respondent-bank contends that the fact that one of the co-borrowers died, even if not disputed, does not vitiate the action taken by the respondent-bank including the auction sale, simply because the writ petitioner, that is, the other co-borrower, is still in the world of the living. Thus, it cannot be said that the auction was a nullity since the surviving co-borrower is also a party to the proceeding.
9. It is further pointed out by the writ petitioner in WPA 1141 of 2024 that by the order dated January 19, 2023, the Debts Recovery Tribunal concerned had turned down the petitioner's prayer, which is the same as in the present writ petition. Thus, such rejection having attained finality, the petitioner in WPA

No. 24765 of 2023 cannot re-agitate the same.

10. There is substance in the contentions of the auction purchaser and the bank as opposed to that of one of the surviving co-borrower. Since the issue raised before this court has been finally settled more than a year back by the concerned Debts Recovery Tribunal by disposal of the application of the co-borrower on January 19, 2023, the same has attained finality as the remedy of the co-borrower lay before the appellate tribunal, which was not availed of.

11. That apart, the bank is justified in contending that in view of one of the co-borrowers being alive and a party to the present writ petition, it cannot be said that the auction was a nullity. Thus, there is no substance in WPA No. 24765 of 2023.

12. Accordingly, WPA No. 24765 of 2023 is dismissed on contest.

13. WPA No. 1141 of 2024 is accordingly allowed, thereby directing the respondent nos. 3 and 4 to ensure that the possession of the property-in-question is handed over to the writ petitioner/auction purchaser positively within four weeks from date.

14. There will be no order as to costs.

15. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)