

16.01.2024
Item no.10.
Court No.6.
AB

**M.A.T. 2162 of 2023
With
IA CAN 1 of 2023**

**Swadesh Ranjan Mondal
Vs
The State of West Bengal & Others**

Mr. Swapan Kumar Pal,
Mr. Milan Kumar Maiti,
Ms. M. D. Biswasfor the Appellant.

Ms. Rama Halder,
Ms. Anima Das Chakraborty.....for the State.

Mr. Srijan Nayek,
Ms. Rituparna Moitra,
Mr. Biplab Das ...for the Respondent Nos.3, 4.

Mr. Sk. Sahjahan Ali,
Mr. K. C. Dasfor the Auction Purchaser.

Mr. P. C. Bhattacharya
.....for the Respondent Nos.2 & 9.

A judgment and order dated September 8, 2023, whereby the appellant's writ petition, being WPA No. 19646 of 2023, was dismissed by a learned Judge of this Court, is under challenge in this appeal, at the instance of the writ petitioner.

It appears that the appellant/writ petitioner obtained loan from the Contai Cooperative Agriculture and Rural Development Bank Limited. As security, the appellant mortgaged his property in favour of the said Bank. Upon the appellant's failure to repay the loan, the Bank put up the property for sale by public auction and sold it to the highest bidder. Possession of

the property was also handed over to the successful auction purchaser long time back.

The appellant approached the learned Single Judge claiming to be aggrieved by the manner in which the mortgaged property was sold off in auction.

The learned Judge, after considering the facts of the case, came to the conclusion that the dispute in question is a private one and a writ petition is not maintainable against the aforesaid Bank. Accordingly, the writ petition was dismissed. Hence, this appeal.

We have heard learned Counsel for the parties.

Learned Advocate for the Bank says that the auction was held in the year 2007 and soon thereafter, in the same year, possession of the property in question was made over to the successful bidder.

Learned Advocate for the successful bidder, who is the purchaser of the property, has intervened and has pointed out that the property in question has been mutated in the name of his client.

Learned Advocate for the Bank further says that there is gross suppression of material facts on the part of the appellant/writ petitioner. The writ petitioner had approached a civil forum unsuccessfully. That has not been mentioned in the writ petition.

Be that as it may, we see no apparent infirmity in the order under appeal. The Bank concerned is a private cooperative Bank. We are in agreement with the learned Single Judge that an application under

Article 226 of the Constitution of India would not lie against such a Private Bank.

However, we see that the appellant has made a representation dated March 16, 2023, through his learned Advocate, addressed to various persons including the Chairman of the respondent Bank. Such representation is still pending.

We direct the Chairman of the respondent Bank, being the respondent no.2 herein, to dispose of the aforesaid representation of the appellant by a reasoned order, in accordance with law, within a period of eight weeks from the date of communication of this order by the appellant to him, after affording an opportunity of hearing to the appellant and the auction purchaser of the property in question or their authorized representatives. The decision so taken by the respondent no.2 shall be communicated to the parties within a week from the date of the decision.

We have not gone into the merits of the appellant's case at all. The respondent no.2 shall take an informed decision in accordance with law.

Since no affidavit has been called for, the allegations made in the application are deemed not to be admitted by the respondents.

The appeal and the connected application are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)