22.11.2024
Item No.33
Court No.11

MAT 2064 of 2024
+
IA No. CAN 1 of 2024

Subir Das & Another
- versus -
State of West Bengal & Ors.

Mr. L. K. Gupta,
Mr. S. Banerjee,
Mr. Dyutimoy Paul,
Mr. Sankar Nath Mukherjee,
Mr. Dulal Chandra Sarkar
...for the Appellants.
Mr. S. Sengupta,
Mr. D. Basu Mallick,
Sk. Md. Masud
...for the State/Respondent no. 1.
Mr. N. C. Bihani,
Ms. P. B. Bihan,
Mr. Soumya Mukherjee
...for the DSDA/Respondent nos. 2-3.
Mr. Avishek Guha,
Ms. Debika Mishra
...for the Respondent no. 4/Bank.
Mr. Subhankar Nag,
Mr. D. Basu Mullick,
Mr. Somnath Roy
...for the Respondent no. 5.

The present intra-court appeal challenges the justifiability of the order dated October 28, 2024, passed in WPA 26412 of 2024. To provide clarity on the origin of the dispute that has led to this appeal, it would be prudent to quote the impugned order in its entirety, which is reproduced below:

" 1. Affidavit of service filed on behalf of the petitioners is taken on record.

2. Supplementary affidavit filed on behalf of the petitioners is also taken on record.

3. After hearing the submission made on behalf of all the parties it appears to me that the instant writ petition cannot *be disposed of without granting opportunity to the respondents to file affidavit-in-oppositions. Accordingly, all the respondents are directed to file their affidavit-in-oppositions within second week of November, 2024.*

4. Let the matter appeal in the list on third week of November, 2024 before the Regular Bench.

5. The point of maintainability raised by the respondents be kept open."

Mr. Gupta, the learned Senior Advocate appearing in support of the appeal, submits that since the learned Single Bench refused to grant the interim order as prayed for, the appellants have been compelled to prefer this appeal. He further submits that the Digha Shankarpur Development Authority (DSDA) owns the property in question, the leasehold rights to which were granted to the petitioners. The appellants, having created an equitable mortgage on the leasehold interest, secured financial assistance from the bank. However, the loan account was declared a Non-Performing Asset (NPA), and proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The appellants challenged this action by filing an application before the Debt Recovery Tribunal (DRT), which remains pending for final adjudication.

He further submits that, during the pendency of that application, the bank issued notices under Section 13(2) and Section 13(4) of the SARFAESI Act. The appellants also challenged these actions of the bank by filing an application before the DRT. He asserts that, although the bank has never obtained possession of the property, it initiated action under Section 14 of the Act but failed to acquire possession of the property. He submits that, ultimately, the issue has been brought before this Court by filing an application under Article 227 of the Constitution of India, which is also awaiting final adjudication. According to him, the appellants' rights are sub-judice.

He contends that, despite the rejection of the auction purchaser's applications for mutation twice, an order dated 4th October 2024 was suddenly passed allowing the mutation without providing the appellants an opportunity to be heard, even though there was no change in circumstances. Such action offends the principle of natural justice. He submits that the writ petition challenging this order was filed on 22nd October 2024, and copies of the same were served on the respondents. On 24th October 2024, the appellants were forcibly dispossessed from the property. He apprehends that the respondents will take further action following the mutation. Given the urgency, he submits that an ad-interim order be passed, failing which the appellants will suffer irreversible injury. He argues that such immediacy warrants the immediate intervention of this Court otherwise, the writ petition would become infructuous. To embolden his submission, he relies on two decisions, reported at *(1990) 2 SCC 117 (Dorab Cawasji Warden v. Coomi Sorab Warden & Ors.) & (2010) 6 SCC 193 (Eureka Forbes Ltd. v. Allahabad Bank).*

While opposing the appeal, all the learned advocates representing the respective respondents, raised the issue of maintainability.

Mr. Sengupta, learned advocate representing the State-respondents, argues that an appeal under Section 54 of the West Bengal Land Reforms Act, 1954 lies against the order allowing mutation in favour of the auction purchaser. Therefore, according to him, both the writ petition and the appeal are not maintainable.

Mr. Bihani, learned advocate representing the DSDA, strenuously argues that the present intra-court appeal is not maintainable. He contends that the impugned order does not reflect that a prayer for an interim order was made. Even if such a prayer was made, the learned Single Bench ultimately invited affidavits from the respondents and directed the matter to be placed before the Regular Bench, keeping the maintainability point open. He claims that such order being an interlocutory order cannot be treated as a judgment within the meaning of clause 15 of the Letters Patent. Placing reliance on the decision, reported at *(2023) 1 SCC 634 (Shyam Sel and Power limited and Another vs. Shyam Steel Industries Limited)*, he argues that, in such circumstances, it must be construed that the learned Single Bench postponed the consideration of the prayer for the grant of an ad-interim or interim order. Therefore, according to him, there is no such order to be impugned in the appeal, and as such, this appeal is not maintainable.

Mr. Nag, learned advocate appearing for the auction purchaser, while narrating the background, submits that the appellants could not repay the loan they had availed of by creating an equitable mortgage on the leasehold interest of the property in favour of the bank. Since the loan remained unpaid, the bank initiated proceedings under the SARFAESI Act, and notices under Section 13(2) and 13(4) of the Act were issued. The appellants challenged these actions of the bank before the DRT but were unsuccessful.

He argues that, following all the procedures prescribed in the relevant enactment and with no objections from the DSDA, the bank put the property up for sale, and the auction purchaser acquired the leasehold rights for approximately 3.3 crores. He contends that the auction sale has been confirmed, a sale certificate has been issued, and the DRT has also confirmed the sale of the leasehold rights to the property. The appellants appealed to the DRAT, but the appeal also failed. Since the sale has been confirmed, the borrowers have lost their right of redemption. He asserts that after confirmation of sale, the appellants have no right to the property and they are rank trespassers to the same. In support of such contentions, he relies on the decisions, reported at *(2024) 1 SCC 1 (Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.) & 2009 SCC OnLine Bom 236 (Sheelvik Agencies vs. Maharashtra Housing and Area & Development Authority (MHADA)* .

He complains that the appellants, by filing frivolous applications in various fora repeatedly, are obstructing the auction purchaser's ability to utilize the property. Referring to the order that first rejected the prayer for mutation, he argues that due to the pendency of proceedings initiated by the appellants, the auction purchaser's prayer for mutation was denied at that stage. He asserts that the second order rejecting the prayer for mutation was never served upon the auction purchaser. He submits that, having followed all prescribed procedures, the mutation has now been completed.

He contends that the appellants were not given an opportunity to be heard on the first two occasions when their prayers for mutation were rejected. Since those rejections favoured the appellants, they did not raise objections; however, now that the mutation order has been passed in favour of the auction purchaser, the appellants allege violation of natural justice. He asserts that even if an opportunity had been given, the outcome would not have changed. He argues that the writ petition is not maintainable and that granting the interim relief sought by the appellants would cause irreparable loss to the auction purchaser. In support of his arguments, he cites the decisions reported at *(2002) 4 SCC 638 (Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr.), (2024) 6 SCC 579 (PHR Invent Educational Society v. UCO Bank & Ors.).*

Mr. Guha, learned advocate for the bank, referred to the no-objection certificate granted by the competent authority, which empowered the bank to create leasehold interest in favour of the auction purchaser. He submits that, due to the borrower's failure to repay the loan, the bank followed the prescribed procedures, conducted the sale which was confirmed later on and a sale certificate was also issued in the auction purchaser's name. The appellants challenged these actions before the DRT and DRAT but were unsuccessful. The mutation was carried out after obtaining permission from the relevant state department. He argues that the appellants have no rights over the property and therefore, they cannot claim a violation of their rights in seeking relief from the Writ Court.

Mr. Gupta seeks to distinguish the judgment of *Shyam Sel and Power Limited & Anr (supra)*, relied upon by Mr. Bihani contending that it is distinguishable on facts and lacks the element of immediacy as involved in the instant lis. Heard the learned advocates appearing for the respective parties and perused the materials on record.

Though the parties have presented extensive arguments on the merits and referred to voluminous documents, we do not find it necessary to delve into the merits of the matter and details of the arguments advanced by the parties.

As noted earlier, the learned Single Bench invited affidavits from the respondents and directed the matter to be listed before the Regular Bench, keeping the maintainability point open. Undoubtedly, every order passed at the interlocutory stage cannot be considered to be a 'judgment' within the meaning of the Letters Patent. It is well-established that although discretionary orders or routine decisions made by the learned Single Bench during the course of hearings may cause inconvenience to a party, they cannot be treated as a 'judgment' unless they exhibit traits of finality. Admittedly, the impugned order does not indicate that a prayer for an interim order was made. However, even assuming such a prayer was made, the issue of maintainability was simultaneously raised by the respondents. Therefore, the learned Single Bench invited affidavits from the respondents and directed the matter to be placed before the Regular Bench, keeping the maintainability issue open. In this context, we find merit in Mr. Bihani's argument. Accordingly, in line with the proposition laid down in the judgment of *Shyam Sel & Power Ltd. (supra)*, it can be concluded that the consideration of the question of whether the writ petitioners were entitled to an ad-interim or interim order was postponed during the period granted to the respondents to file their affidavits.

In view thereof, as the learned Single Bench being the Court of first instance did not consider the question, we are not inclined to go into the same considering the circumstances of the case at hand. However, considering the aspects of the matter and giving anxious consideration to the submissions advanced by the parties, we direct the respondents to file their affidavits to the writ petition within two weeks from date and reply, thereto, if any, be filed by the writ petitioners within a week thereafter and request the learned Single Bench to consider the issue of maintainability of the writ petition and to consider the question whether the appellants are entitled to any interim relief within two weeks after the expiry of the period as specified towards the exchange of affidavits. The parties would be at liberty to mention the matter before the learned Single Bench having determination to hear the writ petition.

It is made clear that we have not gone into the merits of the claim and all points are kept open to be considered by the learned Single Judge.

The appeal and the connected application are, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of the order if applied for, be made over to the parties as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**