26.08.2025
Item No.14
Ct. No. 446
RP

C.R.R 395 of 2025
IDBI Bank Limited
Vs.
The State of West Bengal

Mr. Dipanjan Dutt
Mr. Soumodip Ghosh
Ms. Aprajita Ghosh
Mr. Souvik Ghosh
....for the petitioner

Mr. Debasish Roy, Ld. APP
Mr. Saryati Dutta
Mr. Santanu Talukdar
....for the State

1. This revisional application under Section 438/442 read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 has been filed by the petitioner against an order dated 23rd October, 2024 passed by the learned Chief Judicial Magistrate, Bankshall Court, Kolkata in Complaint Case No.C/55/2024 under Section 156(3) of the Code of Criminal Procedure, 1973 whereby preliminary enquiry report filed by the police personnel was accepted and the application of the petitioner filed under Section 156(3) of the Code of Criminal Procedure, 1973 has been rejected.

2. It is submitted by the learned advocate representing the petitioner that the petitioner, being an existing

company within the meaning of the Companies Act, 2013 and a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949. The petitioner bank filed the application before the court disclosing commission of offence by practicing fraud by the opposite parties . It was alleged by the present petitioner that one Nikhat Neyaz and Nur Islam Dewan, being partners of N.N. International, a partnership firm (borrowers) had availed an overall loan/credit facility of Rs.275 lakhs under Sanction Letter dated December 2, 2008 and thereafter availed various ad-hoc facilities under different sanction letters on different dates. Those two persons attended the office of the petitioner and and deposited with the bank all the title deeds including Deed Being No.2899 of 1962, Deed being no.1649 of 1968, Deed being no.6513 of 1978 and Deed being no.4123 of 1983. It was further portrayed that the property owned and mortgaged by the persons in the following manner as follows:

i) Property owned and mortgaged by Nur Islam Dewan : All that piece and parcel of land measuring an area of 10.24 satak at Mouza-Ramnagar, JL No.97, RS No.182, Khatian No.2026, Dag Nos.7197, 7198, 7199, 7200, 7208, 7209, PS. Baruipur in the district of 24 Parganas (South) together with all buildings and structures.

ii) Property owned and mortgaged by Ayub Ali Lazkar: All that piece and parcel of land measuring an area of 0.66 acre out of 0.78 acre at Mouza Ramnagar, JL No.97, Khatian No.2272, Dag No.10368 and 10369, PS Baruipur in the District of 24 Parganas (South) together with all buildings and structures thereon.

iii) Property owned and mortgaged by Giasuddin Khan : All that piece and parcel of land measuring an area 499 satak at Mouza Purushattam, JL No.98, Khatian No.424, Dag NO.1175, PS Baruipur, in the District of 24 Parganas (South) together with all buildings and structures thereon, and all that piece and parcel of land measuring an area 416 satak at Mouza Paschim Mallickpore, JL No.99, Dag No.54, 57, 63, 117, 204, 395,408, PS Baruipur in the district of 24 Parganas (South) together with all buildings and structures thereon.

iv) Property owned and mortgaged by Golam Hossain Mondal : All that piece and parcel of land measuring an area of 242 satak at Mouza Baruipur, JL No.31, Khatian No.1363, 4231, 4310, Dag No.11898, 11899, 11904, 11905, 4505, 13950, 13952, 13954, 13955 and 13857 being holding no.135, Ward No.16 under Baruipur Municipality, PS Baruipur together with all buildings and structures thereon.

3. Upon execution of the loan and security documents as aforesaid by the borrowers and the accused persons, the petitioner opened a Cash Credit Account being Account No.135651100000301 held jointly in the name of the firm of the borrowers and after availing the said loan credit the borrowers initially made repayment of the said loan account but thereafter the said loan account became highly irregular and lastly they defaulted in making payment. As per internal practice the petitioner reverified the deposited security documents/mortgaged documents/title deeds of the borrowers for initiation of recovery process and during this reverification of the title deeds, it was learnt that the accused persons had deliberately

deposited forged/manufactured/doctored title deeds by forging the sign and seal of the concerned Registrar and others. Accordingly, the petitioner lodged complaint in the office of the Joint Commissioner of Police (Crime), Lalbazar Police Headquarter, Kolkata by bringing the abovementioned facts, which was duly received and subsequently several communications were made on various dates till 14.12.2021 requesting the concerned police department to provide them the first information report but due to unforeseen circumstances nothing has been registered. Accordingly, the petitioner filed a complaint under Section 156(3) CrPC against the borrowers before the learned court. On receipt of the same the learned Chief Metropolitan Magistrate directed an enquiry by the police authority and, accordingly, the concerned police person submitted a preliminary enquiry report holding, inter alia, that since the petitioner had approached the Debt Recovery Tribunal over the issue of non-payment of loan amount by the borrowers and the matter pertains to dispute regarding non-payment of loan amount, no cognizable offence could be substantiated during the preliminary enquiry report.

4. Vide an order dated 23.10.2024 the learned Court of the Chief Judicial Magistrate observed that the petitioner had approached the Debt Recovery Tribunal over the issue of non payment of loan amount by the borrowers and due to absence of any cognizable offence the Court is refrained from passing any direction to the police to draw up an FIR and, accordingly, rejected the application under Section 156(3) CrPC.

5. Being aggrieved thereby, this revisional application has been filed on the ground, inter alia, that the learned Court failed to consider that the modus operandi of the borrowers and the accused persons become further clear from the fact that on the one hand the borrowers had evaded repayment of the loan and on the other hand the petitioner was left with no recourse to satisfy the debts of the accused, as the collateral securities mortgaged to the petitioner by the accused persons on the basis whereof the loan was advanced, turned out to be forged documents.

6. In course of argument it is submitted by the learned advocate for the petitioner that the order

passed by the learned Court is palpably wrong and the petitioner becomes remediless. Furthermore, it submitted before this Court that departmental proceeding has been initiated against the erring officials of the bank over this issue.

7. Learned prosecution on the other hand submits that the preliminary enquiry report filed by the police officer discloses the reason as to why such report has been filed and that account has been declared as NPA and a proceeding has already been initiated before the Debt Recovery Tribunal considering those documents as genuine. Therefore, the learned Court was absolutely right in not accepting the said petition.

8. Having heard the learned counsel for the parties and on going through the materials on record the seminal issue appears that the bank sanctioned such loan amount in favour of the borrower on the basis of the documents scrutinized by the bank officials and accordingly the loan account was opened. It is also apparent that the accused persons repaid certain portion of the loan amount and subsequently stopped making payment. It is undisputed that there is laches and negligence on the part of the bank officials and also there is an

inordinate delay on account of such negligence in detecting that the deeds were forged by their internal mechanism. Question arises if a proceeding is initiated before the Debt Recovery Tribunal per se absolves the investigating authority from enquiring into the complaint where allegation of forgery has been alleged by practicing fraud. The purpose of initiating proceeding before the Debt Recovery Tribunal is recovery of loan amount sanctioned by the bank which is a public money and the purpose of SARFESAI Act is to empower Indian Banks and financial institution to recover overdue loan from the defaulting borrowers and the it is the duty of the bank officials to recover the public dues. Section 34 and 35 of SARFAESI Act specifically barred the jurisdiction of civil court and the consumer court from entertaining the complaint .That apart it is clear that when the proceeding before the debt recovery tribunal was initiated no internal investigation of the bank was taken up. Subsequently, it was detected from the internal reverification of the deeds mortgaged with the bank that those are primarily appears to be forged and accordingly a complaint was filed before the Joint Commissioner of Police but without receiving any response the application under Section 156(3) of CrPC was filed before the learned Magistrate. On careful perusal of the report submitted by the investigating authority it is clear that without entering upon the matter regarding commission of offence of forgery of the deeds as alleged or the signature and seal of the Registrar were forged, no whisper was made in the preliminary report and the learned Magistrate also accepted the same and passed the order reiterating the version of the police officer without considering the gamut of the complaint and therefore this Court is of the view that the learned Chief Judicial Magistrate did not apply his judicial mind while accepting such report and, therefore, the said order is liable to be set aside.

9. In view of the discussion made above, the order dated 23rd October, 2024 passed by the learned Magistrate is hereby set aside and the matter is remanded back with a direction to initiate the proceeding afresh without being influenced by any of the observations made herein above.

10. In the result, the criminal revisional application is disposed of.

11. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Chaitali Chatterjee (Das), J.)