30.06.2025
29
Ct. No.7
sdas

WPA 20005 of 2022

Smt. Shrabani Das & Anr.
Vs.
The State of West Bengal & Ors.

Mr. S. Nayak
Mr. Raj Rajeshwar Sinha
Ms. Tanaya Banerjee
.....for the petitioners

Mr. Ritwik Pattanayak
...... for the respondent nos. 2 & 3

The present writ petition has been preferred seeking a direction upon the respondent Bank to return the original title deed to the petitioners, which had been deposited by them as collateral security for availing a loan facility from the said Bank.

Succinctly stated, the facts giving rise to the institution of the present writ petition are that the petitioners had applied for a loan of Rs. 5,00,000/- in the year 2007, pursuant to which the respondent Bank sanctioned the said amount. However, the petitioners defaulted in repayment of the loan. Consequently, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act of 2002"), were initiated in respect of the mortgaged property.

Records reveal that a notice under Section 13(2) of the said Act was issued to the petitioners, followed by a notice under Section 13(4) of the said Act upon completion of the requisite formalities. Thereafter, the petitioners approached the respondent Bank with a proposal for one-time settlement of the outstanding dues. However, despite receipt of such proposal, no effective steps were taken by the Bank. As a result, the petitioners were constrained to file W.P. No. 12628(W) of 2019, which was disposed of by a co-ordinate Bench of this Hon'ble Court by an order dated 23rd July, 2019, granting liberty to the petitioners to approach the respondent Bank for settlement of their dues.

Pursuant to the aforesaid order, the petitioners once again approached the respondent Bank with a prayer for settlement of their dues. However, the Bank failed to consider the petitioners' proposal for one-time settlement. Faced with such inaction, the petitioners were constrained to file another writ petition, being WPA 12520 of 2022, which was disposed of by a co-ordinate Bench of this Hon'ble Court by an order dated 6th July, 2022. By the said order, the respondent Bank was directed to consider the petitioners' prayer for one-time settlement and to pass a reasoned order thereon within the time period stipulated in the order.

As noted earlier, in the present writ petition, the petitioners have sought a direction upon the respondent

Bank to return the original title deed to them. It is, however, undisputed that the loan in question was availed by the petitioners by creating a mortgage over an immovable property, through deposit of the title deed thereof with the respondent Bank as security. It is also not in dispute that the said loan has not yet been repaid.

Mr. Nayak, learned Advocate appearing for the petitioners, submits that the respondent Bank is at liberty to take appropriate steps, including proceeding with the auction sale of the mortgaged property. However, he contends that even if the Bank is directed to return the original title deed to the petitioners, such direction would not preclude the Bank from exercising its right to auction the said property in accordance with law. According to him, the mere return of the title deed would not pose any legal impediment to the Bank's authority to effect the sale of the secured asset. Subsequently, he submits that this Hon'ble Court may, in the interest of justice, mould the relief and direct the respondent Bank to consider a one-time settlement of the outstanding dues, in terms of the order passed in WPA 12520 of 2022.

Mr. Pattanayak, learned Advocate appearing for the respondent Bank, submits that in compliance with the direction contained in the order passed in WPA 12520 of 2022, an opportunity of hearing was afforded to the petitioners on 12th August, 2022. He further submits that as on 30th June, 2022, the outstanding dues stood at Rs.

37.67 lakhs. During the course of the said hearing, the Bank expressed its willingness to settle the matter fully and finally at Rs. 21.20 lakhs under a one-time settlement scheme. However, the learned Advocate representing the petitioners on that date sought time to obtain instructions from his clients. Thereafter, neither the petitioners nor their learned Advocate appeared before the Bank or took any further steps in the matter.

He further submits that the petitioners had lodged a General Diary with the jurisdictional police station, alleging that the original title deed had been lost on 27th July, 2006. It is, however, an admitted position that proceedings under the SARFAESI Act have been initiated by the secured creditors in respect of the secured assets.

Heard learned Advocates appearing for the respective parties. Perused the materials on record.

It is an admitted position that both the SARFAESI Act and the Recovery of Debts and Bankruptcy Act (formerly known as the Debt Recovery Tribunal Act) provide an efficacious and statutory alternative remedy to a borrower aggrieved by measures taken by the secured creditor. In view of the availability of such alternative remedy, it is well-settled that the Writ Court ought not to exercise its discretionary jurisdiction under Article 226 of the Constitution in such matters. This proposition finds authoritative support in the judgment of the Hon'ble

Supreme Court in *Union Bank of India & Ors. vs. Satyawati Tondon & Ors.*, reported in (2010) 8 SCC 110.

The records reveal that although the respondent Bank had extended a proposal for one-time settlement of the outstanding dues in the year 2022, pursuant to the direction of a Co-ordinate Bench of this Court, the petitioners failed to avail themselves of the said opportunity.

In view of the fact that the loan remains unpaid, it is neither appropriate nor feasible to direct the secured creditor to return the original title deed deposited by the borrowers as security for the loan.

In such circumstances, this Court finds no merit in the petitioners' claim. Accordingly, the writ petition stands dismissed.

Mr. Pattanayak, learned Advocate, in his usual fairness, has acknowledged that no reasoned order was communicated to the petitioners in compliance with the directions contained in the order passed in WPA 12520 of 2022.

In view of this, the petitioners are granted liberty to submit a fresh proposal for one-time settlement of the outstanding dues. Upon receipt of such proposal, the Chairman of the Board of Directors of the respondent Bank shall consider the feasibility of the said proposal and determine whether it can be accepted. The Chairman shall pass a reasoned order on the proposal and communicate the same to the petitioners within eight weeks from the date of receipt of the proposal.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)