

13-09-2018
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

C.O.No.2328 of 2018

Sabbam Hari

-vs-

The Authorised Officer & Ors.

Mr. Arindam Banerjee

Mr. Sandip Agarwal

Mr. Zeeshan Haque

Mr. Ishaan Saha

Mr. Tanay Agarwal

...for the petitioner

Mr. Joybrata Basu Roy

Mr. Rohit Mukherji

...for the bank

Despite service, none appears for the borrower. The bank and the petitioner are represented. Affidavit of service filed in court today be taken on record.

The present challenge has been taken out by an auction purchaser, who deposited the bid amount in terms of a sale notice issued in connection with a proceeding under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Upon deposit of the said amount, pursuant to a subsequent challenge, the sale was set aside by the Debts Recovery Tribunal (DRT) at Hyderabad. A challenge was taken out by the bank against the said order before the Debts Recovery Appellate Tribunal (DRAT) at Kolkata, which was functioning as the appellate tribunal over the DRT at Hyderabad at the relevant juncture. During pendency of

such appeal, the present petitioner took out an application before the appellate forum for refund of the amount deposited by him, in view of the sale having been set aside by the tribunal. By the impugned order, the appellate tribunal postponed the hearing of such application along with all other proceedings in connection with the appeal, in view of a moratorium in terms of an order passed by the National Company Law Tribunal at Hyderabad Bench at Hyderabad dated July 19, 2017.

It is argued by learned advocate for the petitioner that such moratorium, as envisaged under section 14 of the Insolvency and Bankruptcy Code, 2016, excludes from its purview applications of the nature filed by the present petitioner. The circumstances covered by such moratorium, as stipulated in section 14(1), clauses (a) to (d) of the 2016 Code are placed by learned counsel in support of his contention.

Per contra, learned advocate appearing for the bank submits that this court does not have jurisdiction to entertain the present application under Article 227 of the Constitution of India, since the DRAT, Kolkata, while passing the impugned order, was functioning as the appellate tribunal over the DRT at Hyderabad. As such, it is submitted, the concerned High Court having jurisdiction over the appellate tribunal at Hyderabad ought to have territorial jurisdiction to take up for hearing such an application under Article 227 of the Constitution of India.

It is next submitted on behalf of the bank that the

moratorium, as stipulated under section 14 of the 2016 Code, has already expired in view of the lapse of 180 days in the meantime. As such, it is submitted, the impugned order has, in any event, lost its force.

It is further submitted on behalf of the bank that the bank had obtained stay of operation of the order of the DRT whereby the sale in question was set aside. In view of such stay, it is submitted, the fate of the concerned sale is still in limbo. As such, the petitioner ought not to be permitted, at this premature juncture, to get a refund of the amount deposited by the petitioner in connection with his bid.

In reply, learned advocate for the petitioner submits that since the situs of the appellate tribunal passing the impugned order was Kolkata, it is this court which has territorial jurisdiction to exercise its power under Article 227 of the Constitution and not the High Court having jurisdiction over the tribunals at Hyderabad.

It is further submitted that despite the period of 180 days being over, the moratorium might have been extended from time to time, thereby keeping the effect of the impugned order still alive.

As to the territorial jurisdiction, the submission made by the petitioner appears to be more acceptable inasmuch as it is the situs of the tribunal which passed the impugned order which ought to be relevant for deciding the territorial jurisdiction of a High Court under its supervisory jurisdiction as contemplated under Article 227 of Constitution. Merely because the DRAT at Kolkata was

exercising powers over DRT in Hyderabad, it does not render the said appellate tribunal amenable to the jurisdiction of the High Court which exercises jurisdiction over Hyderabad tribunals.

In such view of the matter, CO No.2328 of 2018 is entertained by this court and adjudicated as follows.

As regards the effect of section 14 of the Insolvency and Bankruptcy Code, 2016, it is evident from the language of sub-section (1) and its sub-clauses of the said 2016 Code that the question of refund of bid amount to a proposed purchaser could not come within the purview of the rigours of such provision. The moratorium could not have the effect of preventing a proposed purchaser from getting refund of his bid amount, since none of the clauses of section 14(1) of the 2016 Code restrains the said purchaser from doing so. In the present case, as such, the appellate tribunal acted patently without jurisdiction in postponing the application filed by the petitioner for refund of the bid amount, although the postponement of other facets of the appeal was apparently justified.

As regards the argument advanced by the bank as to the operation of the order, setting aside the sale, being stayed, it is well settled that such stay of operation does not have the effect of setting aside the order of the DRT, but could, at best, be seen as keeping the said order in hibernation. Merely because stay was granted during pendency of the appeal, the operation of the order of the DRT, setting aside the same, could not be said to have

revived such order. In any event, such argument might hold valid for the purpose of adjudicating the application for refund of the dues at best, and could not be a deterrent in the appellate tribunal taking up the application in question for hearing. Whatever might be the merits of the application either way, the appellate tribunal obviously acted without jurisdiction in postponing the said application and relegating the same till to the end of the moratorium.

Accordingly, CO No.2328 of 2018 is allowed, thereby setting aside the impugned order whereby the DRAT at Kolkata adjourned the application of the present petitioner, for refund of the bid amount. The appellate tribunal is directed to take up the said application and dispose of the same at the earliest, as far as the business of the said tribunal permits, upon hearing all concerned parties. There will be no order as to costs.

Certified website copies of this order, if applied for, shall be given to the parties upon compliance of all due formalities.

[Sabyasachi Bhattacharyya, J]

