
(2019) 07 CAL CK 0056
In the Calcutta High Court
Case No : Civil Order/Misc.Cas (CO) No. 2310 Of 2019

Anima Singh

APPELLANT

Vs

Indian Overseas Bank & Anr

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2019) 07 CAL CK 0056

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Pratik Garai, Abhishek Sikdar, Aparajita Ghosh, Sangeetha Ghosh, Gita Sarka

Final Decision : Disposed Off

Judgement

Sabyasachi Bhattacharyya, J

The learned advocate appearing on behalf of the petitioner argues that the Recovery Officer, Debts Recovery Tribunal-II, Kolkata, acted palpably

without jurisdiction in turning down the petitioner's prayer for stay without any reason, despite the pendency of an appeal against the parent

award. As such, it is argued that this court has ample jurisdiction to take up the matter under Article 227 of the Constitution of India, in view of the

patent miscarriage of justice.

It is further submitted that the appellate court has also not passed any order on the stay application filed in connection therewith as yet.

The learned advocate appearing on behalf of the bank submits, on the other hand, that despite having filed the appeal as long back as in the month of

December 2018, the petitioner has not taken any step worth the name in connection with the said appeal, which is still pending at the stage of removal

of defects. The petitioner has not even put in the statutory amount, that is, fifty percent of the award impugned in connection with the appeal. As such, no premium ought to be given to the petitioner on such score.

The learned advocate for the petitioner submits that an application at the instance of the petitioner for waiver of deposit of statutory amount is still pending.

However, nothing satisfactory has been shown by the petitioner to justify that this court has the jurisdiction to interfere under Article 227 of the

Constitution of India as an exceptional case, despite availability of an equally efficacious alternative remedy by way of challenge before the Debts

Recovery Tribunal.

It is open to the petitioner to challenge the order impugned before the tribunal and the excuse that, in the event such a challenge is filed, the same

would not be taken up in the meantime, is till now a mere apprehension, which cannot entitle the petitioner to forum-shop.

As regards the allegation of the petitioner that the appeal is pending, the petitioner has not taken any step for expeditious hearing of the same by

approaching this court or any other forum. In such view of the matter, despite the fact that the petitioner might have an arguable case, there is no

occasion for this court to interfere under Article 227 of the Constitution of India, despite availability of an equally efficacious alternative remedy before

an alternative forum, which is fully functioning.

It would be improper and would violate judicial propriety if, at the drop of the hat, a floodgate is being opened for the petitioner to approach this court,

by-passing the regular forum, which is deprecated.

It is well settled that although the availability of an equally efficacious alternative remedy is not an absolute bar, this court chooses a self-imposed

restriction in the event such a remedy is available, under normal circumstances.

Accordingly, the present application is not entertained.

C.O. 2310 of 2019 is disposed of without entertaining the same, but granting the petitioner liberty to approach the appropriate forum with a proper

challenge against the order impugned.

Leave is granted to the learned advocate on record for the petitioner to take back the certified copy of the order impugned upon compliance of due

formalities.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.