(2020) 08 CAL CK 0033

In the Calcutta High Court

Case No : Appeal From Order (APO) No. 213 Of 2018, General Application (GA) No. 2122 Of 2018, 884 Of 2020

Ballyfabs International Limited — APPELLANT

Vs

IDBI Bank Limited And Ors. — RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Citation : (2020) 08 CAL CK 0033

Hon'ble Judges : Sanjib Banerjee, J;Aniruddha Roy, J

Bench : Division Bench

Advocate : Dhruba Ghosh, Rupak Ghosh, Pradip Kumar Sarawagi, Sukanta Ghosh, Kishore Dutta, Paritosh Sinha, Ayan Banerjee, Arindam Mandal, Tirthankar Das

Final Decision : Disposed Of

Judgement

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The Court: The only issue raised in this appeal is as to the quantum of stamp duty payable for the registration of the deed of sale of a property, where the sale was conducted by an authorised officer of a bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The reliefs claimed in the suit are set out:-

"a) A decree for declaration that the Plaintiff is entitled to have Deed of Conveyance approved and executed by the defendants and each one of them through their authorised officer as per draft Deed of Conveyance forwarded by the Plaintiff under cover of a letter dated February 20, 2018;

b) A decree for mandatory injunction directing the defendants and each one of them through their authorised officer to forthwith approve the draft Deed of Conveyance forwarded by the plaintiff under cover of a letter dated February 20, 2018 and to execute the said Deed so that the same may be registered;

c) Alternatively, a decree be passed directing the Registrar, Original Side of this Hon'ble Court and/or any fit and proper person to forthwith approve the Draft Deed of Conveyance forwarded by the plaintiff under cover of a letter dated February 20, 2018 and to execute the Deed of Conveyance on the basis thereof on behalf of the vendors so that the same may be registered;

d) A decree for perpetual injunction restraining the defendants and each one of them from executing any Sale Certificate, Deed of Sale or any Deed of Conveyance in favour of any other party save and except the plaintiff named above in respect of the said property described more fully in the Schedule annexed hereto and marked 'C';

e) Receiver;

f) Injunction;

g) Costs;

h) Such further and/or other reliefs."

It appears that the Court directed the execution of the deed of conveyance by the bank within a particular period of time whereupon the plaintiff-appellant approached the registering authority and was informed that the stamp duty payable for the registration would be well in excess of what the agreed price of sale would otherwise warrant. The matter was carried back to the Trial Court by the appellant for the Court to render an opinion as to whether the demand by the registering authority was justified, particularly in the context of a Full Bench judgment of this Court reported at (2010) 3 CHN 651 (State of West Bengal v. Sati Enclave Private Limited). According to the appellant, in the light of the dictum in Sati Enclave, when a sale is conducted in open market upon inviting offers therefor, the registering authority cannot harbour any suspicion that the sale was conducted at any price other than what ought to be the fair value for the property.

The State, which is not a party to the suit, was given notice before the Trial Court and heard. The preliminary objection that the State takes in this appeal is that the adjudication of the quantum of stamp duty payable does not fall within the scope of the present suit. According to the State, all that the appellant required of the Court was a declaration and a mandatory injunction that the appellant was entitled to a conveyance being executed in its favour in respect of the relevant property and for the bank to execute the necessary conveyance. The State maintains that the quantum of stamp duty payable is extraneous to the suit and that is a matter between the person who presents the document for registration and the registering authority.

The appellant refers to a Single Bench judgment of this Court rendered on January 25, 2017 in WP No.1236 (W) of 2017 (Vitrarich Agro Food India Limited

v. The State of West Bengal), where it was held that an authorised officer of a bank acting under the provisions of the Act of 2002 could not be regarded as a Court for the sale conducted by such authorised officer to be accorded the same status as a sale conducted by a Court. The appellant submits that whatever proceedings the appellant may resort to before the appellate or other authorities to question the quantum of stamp duty demanded, the Single Bench judgment of this Court would have to be followed and even if the appellant challenged the final departmental order by way of a writ petition, the Single Bench order would govern the field. The appellant suggests that the ratio decidendi in Vitrarich Agro is contrary to the wider dictum of open market sales laid down in Sati Enclave upon relying on a Supreme Court judgment. The appellant asserts that the ratio in Sati Enclave is not confined to Court sales, but would be applicable to all open market sales of immovable properties.

However interesting the legal issue raised may be or whatever difficulty may lie in the way of the appellant assailing the demand made by the registering authority, this Court cannot address an issue which is not within the ambit of the present lis. Merely because the Court has the authority to decide an issue does not imply that the Court would go out of its way and beyond the scope of the proceedings before it to redress a perceived wrong. That would amount to judicial indiscipline and lead to jurisprudential anarchy. The issues that arose or could have arisen within the scope of the present suit do not include the quantum of the stamp duty that may be payable in respect of the relevant conveyance. Indeed, the appellant did not perceive such issue to arise, since the question could never be decided in the absence of the State, which was not made a party to the suit. It cannot now be said, when an objection is taken as to the propriety of the issue being placed for consideration, that the State may be added as a party or the plaint may be amended to incorporate the issue within the fold of the present lis.

Accordingly, the primary question raised by the appellant is not gone into and the appellant is left free to avail of whatever remedies may be open to the appellant to question the propriety of the demand made by the registering authority. Nothing in this order should influence any authority in arriving at a just conclusion on the aspect in accordance with law. The only modification required to the impugned order is that the time to execute the conveyance is enlarged. The conveyance will now be executed within four weeks of the final decision being rendered on the quantum of the stamp duty payable in respect of the conveyance. Once a finality is reached on the quantum of stamp duty payable, the time of four weeks will begin to run and the bank should ensure that the conveyance is executed within such period.

APO No.213 of 2018 along with GA No.2122 of 2018 and GA No.884 of 2020 are disposed of. There will be no order as to costs.