(2018) 01 GAU CK 0061

In the Gauhati High Court

Case No : 7 of 2018

PARTHA DASGUPTA APPELLANT

Vs

INDIAN OVERSEAS BANK & ORS RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Section 151, <a href=3859 — Order 14Rule 2>

Citation : (2018) 01 GAU CK 0061

Hon'ble Judges : Arup Kumar Goswami

Bench : Single Bench

Advocate : S DUTTA, P C GOSWAMI

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Dutta, learned senior counsel for the petitioner/ plaintiff. Also heard Mr. P.C. Goswami, learned counsel appearing for the

respondents/defendants. This application under Article 227 of the Constitution of India is filed against an order dated 21.09.2017 passed by the

learned Civil Judge, Bongaigaon in Title Suit No.63/2016 holding the suit to be not maintainable as the Court lacks jurisdiction to try the suit,

thereby answering the preliminary issue in favour of the respondents herein.

2. In an application filed by the petitioner before the Debts Recovery Tribunal, Guwahati, registered as Application No.33/2016, an agreed order

dated 20.05.2016 was passed. It will be appropriate to quote the relevant portion of the said order:-

During argument learned counsels of both the parties agreed to make payment as under:-

The applicant will pay Rs.2.00 lacs (Rupees two lacs) by 10-30 a.m. on 23.05.2016. Balance amount in 6(six) equal monthly installment which

will be commenced from June 2016. The whole amount will be paid by 30.11.2016. In case the applicant fails to make payment as per terms and

conditions stated herein have, the respondent bank is at liberty to proceed with the sale of the property as per law. The Bank can continue their

process of the sale, but if the amount of Rs.2.00 lacs is paid by 10.30 a.m. on 23.05.2016 the Bank shall not conduct the auction.

The SARFAESI Application being No.33/2016 is disposed of with the above said orders.

Copy of the order be given to the parties. File be consigned to the record room.

3. It appears that as the petitioner had paid the amount of Rs.2,00,000/-, the Bank did not conduct the auction. As the petitioner had only paid

Rs.25,000/- on and from 24.05.2016, a letter was issued to the petitioner on 31.10.2016 (Annexure-7) on the subject of ""Notice intimating

cancellation of Settlement as per Order in SARFAESI Application No.34/2016"". It was indicated in the said letter that on failure to make payment

as per settlement arrived, as reflected in the order dated 20.05.2016 of the Debts Recovery Tribunal, Guwahati, the settlement stood cancelled

and action under the Securitasation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short,

SARFAESI Act"") had been resumed against him by applying before the District Commissioner for assistance in physical possession of the

mortgaged property under Section 14 of the SARFAESI Act.

4. It appears that subsequent thereto, the petitioner filed the suit being Title Suit No.63/2016 in the Court of the learned Civil Judge, Bongaigaon

against the Bank and its functionaries. The copy of the plaint is not annexed with this petition. The defendants filed a petition being Petition

No.334/2017 under Order 14 Rule 2 CPC read with Section 151 CPC praying for framing a preliminary issue in respect of maintainability of the

suit and thereafter, after hearing the learned counsel appearing for the parties, on 18.05.2017, the following preliminary issue was framed.

1) Whether the suit is maintainable in view of the bar created under the provision of Securitization and Reconstruction of the Financial Assets and

Enforcement of Security Interest Act, 2002 and the provisions of Recoveries of debts due to Banks and Financial Institution Act, 1993 and

whether this Court has jurisdiction to entertain and try the present suit.

5. The learned trial Court by the impugned order dated 21.09.2017 held that in view of the express provision as contained in Section 34 of the

SARFAESI Act, the Court lacks jurisdiction and accordingly, dismissed the same as not maintainable. Section 34 of the SARFAESI Act reads as

follows:-

34. Civil Court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a

Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court

or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of

Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

6. The petitioner failed to adhere to the agreed terms of payment, as reflected in the order dated 20.05.2016 in Application No.33/2016 of the

Debts Recovery Tribunal and thereafter, filed the suit.

7. The learned trial Court had observed that the plaintiff''s suit is one intended to stall the recovery process of dues only, for the plaintiff has not

sought for any other declaration, rather had sought for the relief of stopping the process of taking over physical possession of the suit properties for

continuing the auction sale.

8. A perusal of the order dated 20.05.2016 of the Debts Recovery Tribunal goes to show that liberty was granted to the defendant Bank to

proceed with the auction sale of property as per law if the petitioner failed to make payment as per terms and conditions stated therein.

9. In view of the expressed bar imposed by Section 34 of the SARFAESI Act, no case is made out for interference with the impugned order

dated 21.09.2017 passed by the learned Civil Judge, Bongaigaon in Title Suit No.63/2016 and accordingly, the petition is dismissed. No cost.