Money Suit (Commercial)-23 of 2024
CNR : WBBD17-000036-2021
JO Code : WB01311

Order No –35
Dated :01/03/2024

This day is fixed for hearing of IA no. 11 of 22.

Both sides file hazira. Ld. Advocate for both the parties are also present.

The plaintiff has deposited cost of Rs. 2,000/- in terms of the order dated 31/01/2024.

I A no. 11 of 2022 dated 02/09/2022 is taken up for hearing.

The interim application U/sec. 151 of the Code of Civil Procedure has been filed by the plaintiff / petitioners with a prayer for an order restraining the defendants/ OP from proceeding further with the notice u/sec. 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The plaintiffs instituted the present suit and prayed for a decree of Rs. 2,00,62,312.72/- as well as a decree for interest of a sum of Rs. 1,23,38,322.36/- .

It is the case of the plaintiff/ petitioners that for the purpose of execution of different contracts, the plaintiffs/ petitioners approached the OP no. 2 to sanction and disburse term loan and the OP no.2 sanctioned the loan, but it was not term loan but Cash Credit loan.

It is also the case of the plaintiffs/ petitioners that the opposite parties with malafied intention and to earn more interest on the enhanced credit deducted a sum of Rs. 2,34,69,984/- towards realization of interest and subsequently issued written notice calling upon the plaintiffs to regularize the cash credit account by depositing the required amount and in default the OP no. 2 threatened the plaintiff to declare the said account as NPA.

In such a situation the plaintiff filed the instant suit.

WO, has been filed by the OP no. 2 to IA no. 11 of 2022.

In the WO it is the specific contention of the OP no. 2, that on earlier occasion a similar application U/sec. 151 of the Civil Procedure Code was filed by the plaintiff/ petitioners which was rejected by this Court

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by order dated 02/09/2022.

It is also the case of the OP that the Bank had initiated proceedings U/sec. 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for recovery of its dues and therefore this court does not have jurisdiction to pass any order restraining the OP from proceeding further with sec. 13(4) notice.

The Ld. Advocate for the OP no. 2 also submitted that the present application is an abuse of the process of the Court and the same should be rejected with exemplarary cost.

Heard the Ld. Advocates. Considered their submissions.

Admittedly the plaintiff/ petitioners had filed an application on earlier occasion U/sec. 151 of the CPC being IA no. 09 of 2022 on 05/07/202 and had prayed for an order restraining the OP no. 2 from proceeding further with the sec 13(2) notice issued by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The said application was rejected by this Court vide order dated 02/09/2022 and a revision application was preferred against the said order by the plaintiff/ petitioner.

The said revisional application is still pending.

Subsequently, the plaintiffs / petitioners filed an application U/Or. VI Rule 167 read with sec 151 of CPC being IA no. 12 of 2022 dated 31/10/2022 and prayed for incorporating the schedule of property as mentioned in the notice under 13 (2) as well as sec 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The said prayer was also rejected by this Court vide order dated 13/07/2023 and the Court is being informed that another revisional application has been filed by the plaintiff / petitioner challenging the order dated 13/07/2023 and the same is also pending in the Hon’ble High Court.

Sec. 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 lay down that a person (including borrower) aggrieved by any of the measures referred to in sub sec. 4 of sec. 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 taken by the secured

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creditor or its authorized Officer may make an application to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date of which such measures have been taken.

Sec. 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 stipulates that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of which Debt Recovery Tribunal is empowered to decide .

Thus the only remedy which the plaintiff/ petitioner has against the notice U/sec. 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued by the OP no. 2 is to approach the Debt Recovery Tribunal u/sec 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Thus, I do not find any merit in the application filed by the plaintiff/ petitioner.

I A no. 11 of 2022 dated 02/09/2022 is accordingly rejected.

Fix **03/04/2024** for **filing the amended copy of the plaint.**

D/C by me

Judge, Commercial Court Asansol	Judge, Commercial Court Asansol