

**In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side**

07.02.2025
Ct-22
(RD)

**C.O. No. 1971 of 2023
With
IA No. CAN 1 of 2024**

**State Bank of India
Vs.
The Agarpara Company Limited & Ors.**

Mr. Om Narayan Rai, sr. Adv.
Ms. Deblina Lahiri, Adv.
Mr. Mrinmoy Chatterjee, Adv.
Mr. Aayush Sharma, Adv.
.... For the petitioner/SBI

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Anirban Ray, Sr. Adv.
Mr. Debdut Mukherjee, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Shreya Trivedi, Adv.
... For the opposite parties

In Re: CAN 1 of 2024

- 1.** The instant application has been preferred with a prayer for passing interim order to protect the right of the parties till final adjudication of the proceedings with necessary directions upon the opposite party herein/SBI not to alienate/transfer/create any third party interest/part with the possession of the mortgage properties.
- 2.** I have already heard both the Ld. Senior Counsel, appearing on behalf of the parties.
- 3.** Ld. Senior Counsel, Mr. S.N. Mitra, appearing on behalf of the petitioners herein by relying on a set of voluminous documents which have

been annexed with the instant application has contended that the opposite party/Bank by a letter dated 08.09.2017 approached the petitioners herein with a settlement offer for the entire loan amount and also wanted a part payment as a token of acceptance of such offer. Pursuant to such offer, the petitioners agreed to make payment of the settlement amount and for availing the said offer of settlement, tendered a part payment to the tune of Rs. 1,37,81,509/- through a cheque dated 28.10.2017 bearing no. 04242437 drawn in favour of the Bank. The petitioners herein forwarded their acceptance to such offer through letters dated 30.10.2017. The part payment made by the petitioners was duly acknowledged and encashed by the Bank through a relevant letter dated 18.11.2017 which makes the whole set of events come under the purview of Section 8 of the Contract Act.

4. Mr. Mitra, has further argued that soon after the Bank started to resile from the said contract and eventually refused to perform its obligations. Finding no other alternatives, the petitioners filed a suit for specific performance of the agreement wherein the Bank duly filed his written statement and also preferred an application for rejection of the said plaint

under Order 7 Rule 11 of the Code of Civil Procedure read with Section 151 thereof. After hearing Learned Trial Court through the order dated 11.05.2023 dismissed the application filed by the Bank. Being aggrieved, SBI filed the instant revision application being no. C.O. 1971 of 2023 under Article 227 of the Constitution of India wherein the Hon'ble Co-ordinate Bench of this Court was pleased to pass an order of stay of the suit proceedings which was extended from time to time thereafter.

- 5.** Mr. Mitra has further argued that Debt Recovery Tribunal has no jurisdiction to pass a decree in a suit for specific performance of contract and accordingly prays for stay of the auction of the subject property to be held on 07.02.2025.
- 6.** Per Contra, Ld. Senior Counsel, Mr. Om Narayan Rai has vehemently opposed the issue of maintainability raised by Mr. S.N. Mitra. In support of his contention, Mr. Rai has referred to the prima facie observation made by the Hon'ble Co-ordinate Bench in the order dated 07.05.2024. Mr. Rai further submits that the Debt Recovery Tribunal has ample & exclusive jurisdiction over the main dispute pending before the Civil Court. In this regard, Mr. Rai has also asserted that the

petitioners have already filed a stay application before the Debt Recovery Tribunal and therefore this Hon'ble Court is not the appropriate forum for entertaining a stay application. But no supporting document has been produced by Mr. Rai in order to further substantiate his argument. In the meantime, Mr. Mitra has strongly refuted this plea and concludes that no stay application has ever been preferred by the petitioners before the Debt Recovery Tribunal in connection with the auction to be held on 07.02.2025.

- 7.** The main contentious issue regarding the maintainability of the suit is a subject matter of the revision application which is yet to be decided. Regard being had to the above, if the auction of the subject property is allowed to be held on 07.02.2025 then the instant revision application shall stand infructuous.
- 8.** Keeping the aforesaid point in mind, I deem it necessary that the auction proceeding in respect of subject property is required to be stayed only for limited period of time for just adjudication of the pending revision application involving the maintainability of the suit.
- 9.** As a sequel, the auction which is to be held on 07.02.2025 stands stayed for a limited period of time i.e. till last week of March 2025 or until

further order whichever is earlier.

- 10.** Let the matter be listed on 06th March, 2025 at 2 p.m. under the heading 'contested application'.
- 11.** Accordingly, the application Can 1 of 2024 stands disposed of with respect to prayer for stay of auction notice dated 07.02.2025.
- 12.** All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De)