

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/465/2023
With
EC/140/2018
IA No.GA/1/2023

EDELWEISS ASSETS RECONSTRUCTION CO. LTD.
VS.
JMD MEGA AND INFRASTRUCTURES LTD. & ORS

BEFORE :
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 29th December, 2023
(Vacation Bench)

Appearance :

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Aniket Mitra, Adv.
Mr. Munir Ahmed, Adv.
Mr. Arnab Mukherjee, Adv.
Mr. Ishan Bhattacharya, Adv.
... for appellant

Mr. Swatarup Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Enakshi Saha, Adv.
... for the respondent no.1

Mr. Arik Banerjee, Adv.
Mr. Arijit Roy, Adv.
... for the respondent no.2

The Court : This appeal is at the instance of the applicant under GA/2776/2018 and GA/2954/2018 challenging an order dated December 5, 2023.

By the said order the affidavit-in-reply, filed by the appellant was taken on record and the matter has been fixed on January 11, 2024.

The appellant claims to be the joint owners of the premises being 57/1, Bose Pukur Road, Kolkata-700042 by way of inheritance. The appellant claims to have filed a suit for declaration and permanent injunction before the learned Civil Judge (Senior Division) at Alipore, praying for the declaration of title and for further declaration that the alleged deed of conveyance dated February 6, 2004 executed by Smt. Manjusree Ghosh and others is void and not binding upon the applicant. The said suit is still pending for adjudication.

The present appellant has filed an application under Order I Rule 10 of the Code of Civil Procedure praying for addition of party in the execution case which was registered as GA/2776/2018 and another application under Order XXI Rules 99, 100 and 101 of the Code of Civil Procedure being GA/2954/2018 praying for adjudication of its rights, title and interest in respect of the decretal property in the execution case. The applicant states that taking advantage of an order dated October 12, 2023 passed by a Single Bench directing the Receiver to comply with the earlier order of another Single Bench dated July 25, 2018, the notice has been served by the Receiver dated December 13, 2023 upon the applicant wherefrom it appears that the public notice will be published in three newspapers on December 20, 2023.

Mr. Mukherjee, learned Senior Counsel representing the appellant submits that taking advantage of the order dated October 12, 2023, the public notice has been issued wherefrom it appears that the property of the appellant shall be sold by way of auction sale and bids were invited from the intending bidders and the offers will be opened only on January 4, 2024. Mr. Mukherjee further submits that in the event the auction sale is concluded pending hearing

of the applications of the appellant being GA/2776/2018 and GA/2954/2018, the said applications will become infructuous.

Mr. Banerjee, learned Counsel representing the respondent No. 1 submits that by an order dated July 25, 2018 the Receiver was directed to put up the property being premises No. 57/1, Bose Pukur Road, Kolkata-7000042 for sale by public auction after making a valuation thereof. He further submits that by an order dated December 18, 2018 the learned Single Judge directed that no sale of the premises shall take place without prior notice to the applicant in GA/2954/2018. He submits that since the appellant being the applicant in GA/2954/2018 has been notified by the Receiver, the direction contained in the order dated December 18, 2018 has been complied with and the appellant is not entitled to any relief as they have not challenged the order dated December 18, 2018 as well as subsequent order dated October 12, 2023.

Learned Counsel representing the respondent No. 2 adopts the submission of Mr. Banerjee, learned Counsel representing the respondent No. 1 and submits that the appellant is not entitled to any relief as they have not challenged the earlier orders permitting the Receiver to sell the property in question. The learned advocate for respondent No. 2 has also challenged the maintainability of this appeal.

Heard the learned Counsel for the parties and perused the materials on record.

It appears from the record that as far back as in July 25, 2018, the learned Single Judge of this Court directed the Receiver to take immediate possession of premises no. 57/1, Bose Pukur Road, Kolkata- 700042 with a

direction to put up the said property for sale by public auction after making a valuation thereof. After the said order was passed, the appellant has filed the applications being GA/2954/2018 and GA/2776/2018 sometimes in October 2018, that is, after the passing of the order dated July 25, 2018. It appears from the impugned order that the said applications were heard on 5th December, 2023 and the affidavit in reply filed by the appellant in the said applications were also taken on record.

It is not clear as to why the Receiver in spite of being permitted to put up the property for auction sale sometimes in July 2018 kept quiet and have issued the public notice only on December 13, 2023, that is, after the said applications were being heard.

After going through the order dated December 5, 2023, this Court finds that the matter has been fixed on January 11, 2024 before the learned Single Judge.

This Court is of the considered view that pending hearing of GA/2776/2018 and GA/2954/2018, if the bids are opened, the said applications will become infructuous and will also result in multiplicity of proceedings. Since the present appellant/applicant in the said applications have claimed right, title and interest in the decretal property, if the bids are opened, that might affect the right of the applicant, if there be any.

This Court, therefore, holds that this appeal is maintainable.

Since the date for receipt of the offers as indicated in the public notice is between December 21, 2023 and January 3, 2024 and in the absence of the

Receiver, this Court is not in a position to ascertain as to whether the bids have in effect being submitted before the Receiver.

However, without interfering with the notice in so far as the submission of bids is concerned, this Court directs the Receiver not to open the bids on January 4, 2024 or on any subsequent date till the end of January, 2024.

The parties will be at liberty to approach the learned Single Judge for appropriate orders.

With the above observation and direction, the appeal and the connected application stand disposed of.

(HIRANMAY BHATTACHARYYA, J.)

(SUPRATIM BHATTACHARYA, J.)

s.pal/Sbghosh