(2022) 08 CAL CK 0088

In the Calcutta High Court

Case No : FMA No. 943 Of 2022, CAN 1 Of 2022

Chief Manager, Uco Bank And Others APPELLANT

Vs

Amitava Ghosh And Another RESPONDENT

Date of Decision : 30-08-2022

Acts Referred:
Security Interest (Enforcement) Rules, 2002 — Rule 9, 9(1), 9(2), 9(3), 9(4), 9(5)

Citation : (2022) 08 CAL CK 0088

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Chittapriya Ghosh, Ujjwal Kumar Sarkar, Priyanka Saha, Komal Singh, Shohini Chakraborty, Arijit Sarkar

Final Decision : Allowed

Judgement

Prakash Shrivastava, CJ

1. This intra-court appeal is at the instance of the bank (respondent in writ petition) challenge the order of the learned Single Judge dated 29th of June, 2022 whereby WPA 12168 of 2021 filed by the respondent herein (writ petitioner) has been allowed.

2. The facts in nutshell are that the respondent No.1 is the auction purchaser in the e-auction held by the appellant bank on 8th of January, 2021 under the SARFAESI Act. Respondent no. 1 being the successful bidder had deposited Rs.6,27,500/- being 25% of the bid impugned on the day of auction and sale confirmation letter was issued on 9th of January, 2021 directing the respondent No. 1 to pay the remaining 75% of the balance amount within 15 days. The respondent No.1 thereafter had deposited further amount. According to the petitioner, he had deposited Rs.17,88,500/- before 25th of January, 2021. On 6th of February, 2021, the bank had issued notice to the respondent No. 1 writ petitioner requesting him to deposit the balance amount of Rs.7,21,500/- within February 12, 2021. The stand of the petitioner is that on 12th of February, 2021,

when he had gone to deposit the balance amount of Rs. 7,21,500/- he was not permitted to do so by the bank authorities on the ground that he had reached the bank after the banking hours. The writ petitioner, therefore, demanding refund of the entire money vide communication dated 24th of February, 2021 which was turned down by the appellant bank by communication dated 02.03.2021 stating that since the full amount was not deposited within time, therefore, the sum of Rs. 17,88,500/-deposited by the writ petitioner was liable to be forfeited. Hence, in the writ petition, the petitioner had prayed form a direction to quash the communication dated 2nd of March, 2021 and further direction to refund the entire amount.

3. Learned Single Judge has taken the view that the bank had acted contrary to Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 by extending the time for deposit of balance amount unilaterally, therefore, the writ petition has been allowed by directing the appellant bank to return the amount of Rs.17,88,500/.

4. Submission of the learned Counsel for the bank is that the writ petitioner is not entitled to refund of the amount and the same has been forfeited in terms of the Rule 9 of the Rules.

5. As against this, learned Counsel for the respondent has supported the impugned order.

6. We have heard learned Counsel for the parties and perused the record.

7. Rule 9(1) to 9(5) of the Security Interest (Enforcement) Rules, 2002 which are relevant for present controversy provide as under:

“9. Time of sale, Issue of sale certificate and delivery of possession, etc.- (1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 8:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold."

8. In the present case, an initial deposit of Rs.6,27,500/- that is 25% of the bid amount on the date of e-auction was made in accordance with Rule 9(3) of the Rules. The remaining 75% of the bid amount was to be paid before the 15th day of confirmation of sale. The writ petitioner had deposited total sum of Rs. 17,88,500/- before issuance of notice of extension of time by the Bank. Though the respondent bank vide communication dated 6th of February, 2021 had extended the time for deposit the balance amount of Rs. 7,25,500/-within 12.02.2021 but within this extended period no amount was deposited by the respondent writ petitioner.

9. Learned Single Judge has allowed the writ petition on the ground that the period for deposit of the balance amount was unilaterally extended by the appellant bank contrary to Rule 9(4) of the Rules of 2002. But if no amount has been deposited by the respondent writ petitioner during the extended period, then any illegality in extension is inconsequential and cannot form the basis to direct the refund of amount deposited earlier. That apart, learned Counsel for the appellant has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of General Manager, Sri Siddeshwara Cooperative Bank Limited and Another vs. Ikbal and Others reported in (2013) 10 SCC 83 wherein it has been held that the provisions contained in Rule 9(3) and Rule 9(4) are for the benefit of borrower and secured creditor and they can lawfully waive their right.

10. It has also been held in the above judgment that the expression "written agreement" between the parties contained in Rule 9(4) means a mutual understanding or an arrangement about relative rights and duties by the parties and the expression means nothing more than a manifestation of mutual assent in writing. In the present case, the communication dated 6th of February, 2021 was sent in writing by the appellant bank to the respondent writ petitioner extending the time to deposit the balance amount within 12.02.2021. The plea contained in

the writ petition indicates that the said communication was accepted and there was an attempt to act upon it by the writ petitioner.

11. Since, the respondent writ petitioner has failed to deposit the full amount as required by Rule 9(4), therefore, deposited amount has rightly been forfeited by bank under Rule 9(5).

12. In the aforesaid circumstances of the case, we are of the opinion that the learned Single Judge has committed an error in directing refund of the sum of Rs. 17,88,500/- deposited by the appellant on the ground of violation of Rule 9(4) of the Rules of 2002. Hence, we allow the appeal and set aside the order of the learned Single Judge.