

**(2019) 01 CAL CK 0126**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 29398 Of 2017**

Dr. Jayesh Kumar Jha

APPELLANT

Vs

Corporation Bank Dharmotola Branch & Ors.

RESPONDENT

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**Date of Decision :** 18-01-2019

**Acts Referred:**

Security Interest (Enforcement) Rules, 2002 — Rule 8, 8(6), 8(6)(f)  
Constitution Of India, 1950 — Article 12

**Citation :** (2019) 01 CAL CK 0126

**Hon'ble Judges :** Debangsu Basak, J

**Bench :** Single Bench

**Advocate :** Kallol Basu, Bratin Kumar, Samik Sarkar, Uday Sankar, Sailesh Mishra

**Final Decision :** Disposed Off

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## Judgement

Debangsu Basak, J

The petitioner seeks cancellation of a letter dated October 26, 2017 issued by the Corporation Bank. He seeks a direction upon the bank to reimburse the municipal tax paid on account of an immovable property along with interest.

Learned Advocate appearing on behalf of the petitioner submits that, the bank undertook E-Auction of an immovable property by a notice dated March 30, 2017. The petitioner participated therein. The petitioner became successful in such auction. The petitioner was put into possession of such immovable property. A Sale Certificate was issued in favour of the petitioner. The Sale Certificate states that the sale was free from all encumbrances. Subsequently, the petitioner was faced with claims for liabilities in respect of the immovable property on two counts. One is property tax payable to the Kolkata Municipal Corporation and the other is maintenance charges. According to him, the petitioner is not liable to pay any maintenance charge or property tax for the period up to April 3, 2017, being the date of sale. He refers to the correspondence exchanged between the parties and submits that, no liability of the property can be foisted upon the

petitioner for the period prior to the Sale Certificate dated April 3, 2017. In support of such contentions, he relies upon Judgment and Order dated May 1, 2018 delivered in W.P. No. 128 (W) of 2016 (M/s. Poddar Commodities Pvt. Ltd. & Anr. Vs. Arms & Anr.) and Judgment and order dated September 12, 2018 delivered in W.P. No. 27685 (W) of 2017 (Yashika Reality Private Limited & Ors. Vs. Kolkata Municipal Corporation & Ors.).

Learned Advocate appearing on behalf of the bank submits that, the property was put up for sale on 'as is where is' and 'as is what is' basis. He refers to the notice inviting the E-Auction. He submits that, the petitioner ought to have apprised himself as the quality of the defect in title, if any, and the liability in respect of the property. The petitioner not having done so cannot claim that, the petitioner is not liable to pay the arrear property tax or the maintenance charges. Moreover, the bank did not have any knowledge of such dues. An authorized officer of the bank exercising jurisdiction under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 is not the owner of the property. He has no obligation to look into such issues. The petitioner not having discharged his obligations cannot claim such amount from the bank. In support of his contentions, he relies upon a decision of the Madras High Court dated October 28, 2009 passed in W.P. No. 19557 of 2009 and M.P. No. 1 of 2009 (V. Sambandan vs. The Punjab National Bank & Anr.). He submits that, the writ petition is not maintainable as the petitioner has other alternative remedies available. He points out that, Kolkata Municipal Corporation is not a party respondent in the proceedings. Therefore, according to him, no relief can be granted to the petitioner.

The petitioner participated in an E-Auction undertaken by the bank. The bank put up immovable property for sale, by E-Auction notice dated February 24, 2017. The E-Auction was conducted under the provisions of the SARFAESI Act, 2002. The relevant terms and conditions of the E-Auction are as follows:-

"Terms ad Conditions:

(A) E-Auction is being held on "AS IS WHERE IS" & "AS IS WHAT IS" BASIS and the Bank is not responsible for title, condition or any other fact affecting the property.

(E) There is no encumbrances on the property. However the intending bidders should make their own independent enquiries regarding the encumbrances, title of the property put on auction and the claims/rights/dues affecting the property, prior to submitting their bid. The E-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any representation of the Bank to sell the property. The Authorized Officer/Secured Creditor shall not be responsible in any way for any third party claims/rights/dues."

The petitioner participated in such E-Auction. The petitioner became the highest bidder. The sale was confirmed in favour of the petitioner. The petitioner was put into possession of the immovable property on April 1, 2017. The bank thereafter

proceeded to issue a Sale Certificate dated April 3, 2017. The relevant portion of the Sale Certificate is as follows:-

"The sale of the Schedule property was made free from all encumbrances known to the Secured Creditor listed below on deposit of the money demanded by the Undersigned."

Sale of an immovable property under the Act of 2002 is conducted in terms of Rule 8 of the Security Interest (Enforcement) Rules, 2002. The relevant provision of Rule 8 of the Rules 2002 is Rule 8(6), which is as follows:-

"(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

PROVIDED that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers; one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,-

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer consider it material for a purchaser to know in order to judge the nature and value of the property."

Rule 8(6) of the Rules of 2002 allows the authorized officer exercising powers under the Act of 2002, to put up an immovable property for sale by public auction. It requires the authorized officer to inform the prospective bidder as to the description of the immovable property including details of the encumbrances known to the secured creditor. It also requires the authorized officer to inform the other particulars as stipulated in Rule 8(6). Rule 8(6)(f) enjoins upon the authorised officer to include in a notice for public auction every details that he considers material for a purchaser to know in order to judge the nature and value of the property. It is a duty cast upon the authorised officer to discharge. Arrears of property tax would affect the value of the property. Therefore, it is the duty of the authorised officer to apprise itself if there is any arrear of property tax or not. Any valuation of an immovable property will look into the aspect of arrear of property tax. In the present case, the bank claims that, the authorized officer was unaware of the dues on account of arrears, of maintenance charges and property tax. According to the bank, authorized officer is not the owner of

the immovable property. An authorised is not obliged to apprise himself of the existing liabilities if any, in respect of the property concerned. The E- Auction notice dated February 24, 2017 put up the property for sale on 'as is where is' and 'as is what is' basis. It additionally says that, the bank is not responsible for title condition or any other fact affecting the property. It goes on to say that, there is no encumbrance on the property and that, the intending bidder should make their any independent enquiries with regard to encumbrance, title of the property put on auction and claims/rights/dues affecting the property prior to submitting their bid.

The contention of the bank that, the authorized officer is not obliged to apprise himself of any encumbrances in respect of the property or liability of the property is misplaced. An authorized officer exercising powers under the Act of 2002 is in the position of a trustee. He holds the secured asset in trust for and on behalf of the debtors, the owners of the property and the secured creditor. As a trustee, he is required to discharge such obligations so as to ensure the protection and preservation of the secured asset, inn this case, the immovable property concerned, in the best possible way. In order to protect and preserve a secured asset, it is imperative that an authorized officer appraises himself, of at least, the statutory liabilities in respect of such secured asset. The immovable property concerned is subject to property tax. Any prudent person exercising ordinary diligence will know that property tax is payable in respect of the immovable property concerned. Any prudent person exercising ordinary diligence would have appraised himself, as to the quantum of liability of property tax in respect of the immovable property. An authorised officer is obliged to act as a prudent person exercising diligence in respect of any secured asset over which he is exercising jurisdiction under the Act of 2002. The Act of 2002 requires the authorised officer to issue a sale certificate, certifying the sale and stating, inter alia, that the sale was free from encumbrances known to the bank. The sale is therefore free from encumbrances. It is qualified by the phrase "known to the bank". A bank as a secured creditor is obliged to act in a manner so as to protect and preserve the secured asset. It must take all steps necessary to obtain the highest price for the secured asset in the event of the sale. A secured creditor cannot be allowed to take benefit of its own negligence. The claim that the secured creditor was not aware of property tax dues is a claim which sounds in negligence on the part of the secured creditor. Rule 8(6) of the Security Interest Rules, 2002 read with the Sale Certificate required to be issued thereunder casts an obligation on the secured creditor to apprise itself of all encumbrances in respect of the property prior to putting it up for sale. It saves the secured creditor of such encumbrances which a secured creditor may not be aware of despite due diligence.

Yashika Reality Pvt. Ltd. and Other (supra) considers such issue from the perspective of the Companies Act, 1956 and a demand raised by the Kolkata Municipal Corporation with regard to an immovable property concerned. In that case, Corporation demanded property tax from a purchaser of an immovable property. The purchaser purchased the property in a proceeding undertaken

under the SARFAESI Act, 2002. Yashika Reality Pvt. Ltd. and Other (supra) is of the view that, a purchaser of an immovable property under the provisions of the SARFAESI Act, 2002 is not liable to pay property tax for the period prior to the date of the sale. The liability commences from the date of sale. Yashika Reality Pvt. Ltd. & Ors. (supra) was rendered after considering the authorities cited before it including (2009) 4 SCC 486 (A.I. Champdany Official Liquidator & Anr.).

In M/s. Poddar Commodities Pvt. Ltd. & Anr (supra), the forfeiture of earnest money deposit made by a securitization company was under challenge and considering such facts and scenario in that case, it was held that, there was no infirmity in the forfeiture of the earnest money deposit. V. Sambandan (supra) is a case where a purchaser of an immovable property after purchase questioned the title of the property concerned and wanted refund from the bank. The same was disallowed. The fact scenario in the present case is not similar to that as obtaining in V. Sambandan. In this case, the petitioner is not challenging the title of the property.

The Sale Certificate issued by the bank is in accordance with the Security Interest (Enforcement) Rules, 2002. The relevant portion of the Sale Certificate states that sale was free from all encumbrances known to the secured creditor. The correspondence produced on record establishes that, the bank was aware of arrears on account of maintenance charges in respect of the property concerned prior to the sale. The bank claims that, it was not aware of the property tax due. As noted above, had the bank acted diligently as a prudent person, it would have known that property taxes were due. Moreover, the petitioner did not enjoy the benefit of the property prior to the date of the sale. The bank is, therefore, liable to bear the property tax dues for the period up to the date of the sale.

The point of maintainability raised is without substances. A purchaser of an immovable is before the writ court for the failure of an instrumentality within the meaning of Article 12 of the Constitution of India. The writ petition is maintainable.

In the facts of the present case, it appears from the materials made available on record that, the petitioner paid a sum of Rs.2,72,745/- on account of property tax for the period prior to the date of sale. Bank should, therefore, reimburse such sum of Rs.2,72,745/- to the petitioner within a period of four weeks from date. In the facts of the present case I am not minded to award interest.

In view of the above discussions above, the writing dated October 26, 2010 issued by the bank is quashed.

W.P. 29398 (W) of 2017 is disposed of without any order as to costs

Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.