(2021) 10 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.20833 Of 2021 (O&M)

M/S Beyond Imaginations, Panipat — APPELLANT

Vs

Bank Of Baroda (Erstwhile Dena Bank), Panipat — RESPONDENT

Date of Decision : 14-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Negotiable Instruments Act, 1881 — Section 138
Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 14

Citation : (2021) 10 P&H CK 0089

Hon'ble Judges : G.S. Sandhawalia, J;Sant Parkash, J

Bench : Division Bench

Advocate : Ashwani Talwar, C.S. Pasricha

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J

CM-15592-CWP-2021

Application to place on record additional submissions by way of affidavit of the petitioner, is allowed. The same is taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

MAIN CASE

In the present writ petition filed under Article 226 of the Constitution of India the petitioner seeks setting aside of the e-auction notice dated 18.09.2021 (Annexure P-19) as well as the order dated 31.03.2021 (Annexure P-15), whereby the compromise agreement entered by the respondent-Bank got frustrated.

A perusal of the paper-book would go on to show that a compromise proposal for

Rs.3.61 crores in full and final settlement was entered inter se the respondent-Bank and the petitioner on 31.12.2020 (Annexure P-9). The payment terms were as under:-

"Payment Terms:

1. Borrower has deposited Rs.1.50 crore with branch in No lien amount.

2. Borrower will deposit Rs.1.50 crore before 25.03.2021.

3. Borrower will deposit remaining Rs.0.61 crore by 25. 04.2021.

4. Interest to be charged @ 12% p.a. simple."

As per Clause 9, the Bank had also released one property of the petitioner measuring 565 square yards situated in Mahavir Colony. Clause 9 reads as under:-

"9. We are going to release one property after accepting all above terms and condition by the party, having area admeasuring 565 sq. yards to khewat no.959/864 min khasra no.3306 (1-1), 3307 (1-9) khewat no.474/443 khatoni no.587 khasra no.3298 min (1-2) situated at Mahavir Colony patti Rajputan near Gyandeep School under MC limit of Panipat registered gift deed no.6918 dated 01-12-2009."

The effect was given on 11.01.2021 (Annexure P-10) to the release of the property at Mahavir Colony. Initially, the petitioner paid a sum of Rs.1.50 crores, but the second cheque as such dated 25.03.2021 (Annexure P-11) for Rs.1.50 crores and third cheque dated 25.04.2021 (Annexure P-12) for Rs.0.61 crore bounced and admittedly the petitioner is facing the proceedings under Section 138 of the Negotiable Instruments Act, 1881.

It is in pursuance of the failing of the petitioner to stick to the terms of the compromise, the Bank has issued the auction notice dated 18.09.2021 (Annexure P-19), in which the property at Kabul Bagh near Narang Property Dealer within the limits of M.C. Panipat is now being put on auction, which is measuring 1542 square yards. The reserve price has been fixed @ Rs.2,12,00,000/- and auction is to take place on 18.10.2021.

The petitioner had been put to terms as such on 12.10.2021 whether he is willing to deposit Rs.20 lakhs over and above the bid/reserve amount. The affidavit has now been filed dated 13.10.2021 in which the petitioner has postponed the first deposit with a offer of a paltry amount of Rs.10 lakhs on 10.11.2021 and another installment of Rs.20 lakhs to 22.12.2021. The balance amount he proposes to pay on 28.02.2022.

It is not disputed that as per the detailed terms and conditions of sale, the auction purchaser would have to immediately deposit 25% of the bid amount, which would work out to over Rs.50 lakhs. The bonafides of the petitioner to deposit the amounts is thus doubted.

It is also not disputed that on an earlier occasion also CWP No.18874 of 2020 filed by the petitioner challenging the order under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was dismissed on 09.11.2020 (Annexure P-4) alongwith costs of Rs.50,000/-. The Division Bench had noticed the intention of the proprietor of petitioner that they were only buying time and the lack of bonafides of the petitioners was well established. Relevant portion of the said order reads as under:-

"9. There is another aspect of the matter. The Petitioners pursued their remedies before the DRT, the S.A.(s) were dismissed in the year 2015. They chose to give it a quietus by not filing the appeals. The Petitioners were obviously buying time. The inaction of the authorities to implement the Section 14 order also became a handy tool for the Petitioners to retain possession of the mortgaged properties. No stone was left unturned to delay the taking over of possession of secured properties by the Bank. Two civil suits were filed by one Hitesh Bhasin for permanent injunction, claiming himself to be a tenant. The civil suits were dismissed on 18th January, 2020. Though there is a passing reference of the filing of the suits in the present writ petition, neither the details have been mentioned nor the judgments of dismissal of the suits are annexed. The Petitioners are Respondents in the appeals filed against the dismissal judgments. Copies of those judgments are surely available with the Petitioners. Be that as it may, the pursuing of the statutory remedy before the DRT and then not taking it to a logical end, also appears to be part of the same strategy. As soon as an order was passed by this Court on 9th October, 2020, the Petitioners chose to shoot another offer letter dated 22nd October, 2020 to the Bank. It is more than clear that selected and well calculated steps were taken only to throw a spanner in the procedure to take over possession of the mortgaged properties. The lack of BONA FIDES of the Petitioners is well established."

It is also to be noticed that an agreement has been entered by the petitioner with another person on 04.09.2021 (Annexure P-16) whereby against the same property he has received Rs.10 lakhs in advance and even the said amount is not forth coming for depositing immediately. Thus, the bonafides of the petitioner are seriously doubted. The Bank is fair enough as it has released one of the property on an earlier occasion after receiving the amount of first installment of the OTS.

In such circumstances, once the Bank is only resorting to the prescribed procedure by putting the property to auction against the outstanding amount of Rs.2,19,96,429.42/- alongwith unserviced interest and other charges, the said action cannot be faulted in any manner.

Resultantly, in view of the above, no further indulgence can be granted to the petitioner. The present writ petition stands dismissed, accordingly, in limine.