(2023) 05 DEL CK 0518

In the Delhi High Court

Case No : Letter Patent Appeal No. 417 Of 2023, Civil Miscellaneous No. 23290, 23291 Of 2023

Seema Sahni APPELLANT

Vs

Punjab National Bank And Ors RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:
Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(4), 14, 17, 17(1), 18

Citation : (2023) 05 DEL CK 0518

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Shivanshu Bhardwaj

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present LPA is arising out of an order dated 24.04.2023 passed in W.P.(C.) No. 9540/2022 titled Seema Sahni Vs. Punjab National Bank and Ors.

2. The undisputed fact of the case reveal that the Appellant before this Court, who was a bidder in an E-Auction conducted on 21.03.2022 in respect of mortgaged property i.e. Duplex dwelling unit on 1st and 2nd floor situated at Ashoka Cresent – 63 (FF-1) and (FF-2), DLF City, Phase-1, Gurgaon, came up before this Court being aggrieved by the action of the Respondent Bank in cancelling the auction process on 31.03.2022.

3. The facts further reveal that on 04.03.2022 a notice was published in respect of auction to be conducted by the Respondent Bank, as the Borrowers and Guarantors failed to clear their dues.

4. The Appellant, after registration for the process of auction, participated in the Auction scheduled on 22.03.2022, and was declared a successful bidder for sum

of Rs. 3,53,00,000/-, and was directed to deposit 25% of the Auction Price.

5. The Appellant, in fact, had already deposited Rs. 35,20,000/- as EMD amount and the balance amount of Rs. 53,05,000/- was required to be deposited by 23.03.2022. She was declared as a successful bidder on 23.03.2022. The Appellant deposited 53,05,000/-, meaning thereby, paid the 25% of the total amount in respect of the Auction Property, however, she was informed that the process of auction has been cancelled. The Appellant, in those circumstances, came up before this Court by filing a Writ Petition and prayed for the following reliefs:

"a. Set aside the impugned order dated 24.04.2023, in WP (C) No. 9450/.2022, passed by the Ld. Single Judge of this Hon'ble Court;

b. Issue order quashing and setting aside the decision/order dated 31.03.2022 (Annexure P-1) take by the Respondents cancelling the auction process, after the Appellant was successful in the auction and had deposited the 25 percent of the price of the auctioned property; .

c. Issue of commanding the Respondents to deem the sale of the auctioned property in favour of the Appellant as confirmed and to issue sale certificate in her favour• after accepting the balance 75 percent price of the auctioned property;

d. To pass such other and further order, which this Hon'ble High Court deem fit and proper in the existing facts and circumstances of the case."

6. A reply was filed before the Learned Single Judge, and it was brought to the notice of the Learned Single Judge that the borrower submitted one time settlement (OTS) proposal which was accepted by the Respondent Bank keeping in view the policy framed by the Reserve Bank of India. The Respondent Bank also informed the Learned Single Judge that the bid offered by the Appellant was for a sum of Rs. 3,53,00,000/- and the proposal of the Borrower for an OTS was accepted at Rs. 3,82,,00,000/-, and, therefore, the same was cancelled resulting in cancellation of the auction process.

7. Learned Counsel appearing for the Appellant has vehemently argued before this Court that the auction of the Respondent is contrary to the Provision of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"), and the same is arbitrary and illegal, and, therefore, the Learned Single Judge has erred in law and fact in dismissing the Writ Petition with a liberty to avail the alternative remedy. The Learned Single Judge in Paragraph 7 to 21 has held has under:

"7. I have heard learned counsel appearing on behalf of the parties and perused the record.

8. The Hon'ble Supreme Court in the case of Agarwal Tracom Pvt. Ltd. (supra) in paragraphs 30 and 31 has held as under:-

"30. In our view, therefore, the• expression any ofthe measures referred to in Section 13(4) taken by secured creditor or his authorized officer in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section13(4).

31. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression any person as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act "

9. It is thus seen that the Hon'ble Supreme Court in unequivocal terms has held that the auction purchaser, if is aggrieved by the action of the secured creditor in forfeiting his money, is entitled to avail the remedy under Section 17(1) of the SARFAESI Act, 2002.

10. While considering the decision in the case of Agarwal Tracom Pvt. Ltd. (supra), this court in its decision dated 01.03.2023 in W.P.(C) No.2334/2023 titled Shammy Kumar v. Bank of Baroda and Anr. had an occasion to consider the submissions made by the occupant in a mortgaged property, and while deciding whether the remedy under the provisions of Section 17 of the SARFAESI Act, 2002 would be available to him or not, has held that the grievance which essentially relates to any of the measures taken under Section 13(4) of the SARFAESI Act, 2002 can be raised before the DRT under Section 17 of the SARFAESI Act, 2002.

11. In another decision in the case of Sudhakar G Kalambe Vs. Karur Vysya Bank Limited & Anr. in W.P. (C) No.3502/2023 decided on 21.03.2023, a similar grievance was raised by the successful bidder whose bid security was forfeited. This court in terms of paragraphs 3 to 5 has held that the aggrieved person therein had an efficacious remedy in terms of Section 17 of the SARFAESI Act, 2002. Paragraph Nos.3 to 5 of the said decision are reproduced as under:-

“3. The Hon'ble Supreme Court in the cases of Agarwal Tracom Private Limited v. Punjab National Bank and Ors. and Union Bank of India v. Satywati Tondon and Ors. has held that expression "any person" used in Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (in short, SARFAESI Act) is of wide import. Section 17 takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13 (4) or Section 14 of the SARFAESI Act.

4. It has also been held that both, the Tribunal and the Appellate Tribunal are empowered under Section 17 and 18 to pass interim orders and are required to decide the matters within a fixed time schedule. It is, therefore, seen that the remedy under Section 17 is available to an aggrieved person under the SARFAESI Act. In the instant case, the petitioner is essentially aggrieved by the

measures being taken under the provisions of the SARFAESI Act.

5. In view of the above, this court is not inclined to entertain the instant petition, however, the petitioner would be at liberty to take appropriate remedy in accordance with law and there is no reason to believe if such a remedy is taken recourse to, the same would not be decided in accordance with law as expeditiously as possible."

12. In the instant case, what is being contended by the learned counsel appearing on behalf of the petitioner is that the cancellation of the auction notice would not fall within the measures envisaged under Section 13(4) of the SARFAESI Act, 2002 and therefore, he has no remedy to approach DRT under Section 17 of the SARFAESI Act, 2002.

13. I have carefully considered the submissions. In the considered opinion of this court, the aforesaid argument is not acceptable as there is no such embargo under Section 17 of the SARFAESI Act, 2002. The provisions of Section 17 cannot be read so as to exclude the remedy for any person who is aggrieved by the cancellation of the auction sale or any other steps arising thereto which were taken pursuant to the measures under Section 14 of the SARFAESI Act, 2002.

14. Since the auction notice was one of the measures resorted to by the secured creditor for recovery of the dues and the petitioner has a grievance with respect to the aforesaid measure, therefore, the remedy under Section 17 of the SARFAESI Act, 2002 is available to the petitioner.

15. However, in any case, the writ jurisdiction being equitable and discretionary in nature should not be exercised, unless, there are exceptional circumstances. In view of the same, this court does not consider it appropriate to invoke its powers under Article 226 of the Constitution of India under the facts of the instant case. Reference can also be made to the decisions of the Hon'ble Supreme Court in the cases of Commissioner of Income Tax & Ors. v. Chhabil Dass Aggarwal (2014)1 SCC 603, GM, Sri Siddeshwara Co-op. Bank v. Ikbal & Ors., (2013) 10 SCC 83 and Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.

16. Learned counsel appearing on behalf of the petitioner, at this stage, states that there was an interim order passed by this court on 17.06.2022 directing the parties to maintain the status quo and he apprehends that by the time he approaches the concerned DRT, the respondents would hand over the possession of the mortgaged property to the principal borrower. He, therefore, prays that under the facts of the present case, the order of status quo may be extended for a period of 30 days from today to enable him to take appropriate remedy in accordance with law.

17. The said prayer is opposed by the learned counsel appearing on behalf of the respondent(s). Learned counsel appearing on behalf of the respondent-Bank states that in any case, the respondent-Bank would not have any objection in

refunding the money but the order of status quo should not be extended beyond today.

18. I have considered the submissions made by learned counsel appearing on behalf of the parties and in view of the fact that the order of status quo is in operation since 17.06.2022, this court deems it appropriate to extend the same for a period of 15 days from today.

19. Accordingly, the instant petition stands dismissed along with the pending application.

20. Needless to state that nothing stated hereinabove shall amount to any expression on the merits or demerits of the case.

21. The petitioner is at liberty to take appropriate remedy in accordance with law."

8. This Court has carefully gone through the order passed by the Learned Single Judge.

9. The present case is a case where the Borrower, after the process of auction was conducted, submitted an OTS Proposal and the Bank keeping in view the policy framed by the Reserve Bank of India has accepted the same.

10. The Borrower in respect of his dwelling house has offered a sum of Rs. 3,82,00,000/-, which was certainly the higher offer than the offer made by the Appellant and the OTS was accepted on 21.03.2022. The Respondent Bank in those circumstances has cancelled the auction.

11. Section 17 of the SARFAESI Act certainly provides a remedy to aggrieved person, and as rightly held by Learned Single Judge, cancellation of an auction is a subsequent stage in respect of measures under Section 14 of the SARFAESI Act, and, therefore, by no stretch of imagination it can be presumed that a successful auction purchaser does not have a remedy to prefer an appeal under Section 17 of the SARFAESI Act.

12. It is true that writ jurisdiction can be invoked in the matter; however, the writ jurisdiction being equitable and discretionary in nature should not be exercised unless there are exceptional circumstances, as rightly held by the Learned Single Judge.

13. In the considered opinion of this Court, the Learned Single Judge was justified in disposing of the Writ Petition with liberty to prefer an appeal. This Court does not find any reason to interfere with the order passed by the Learned Single Judge as the Petitioner does have a remedy of appeal under Section 17 of the SARFAESI Act.

14. Resultantly, no case for interference is made out in the matter and, therefore, the present Writ Petition stands dismissed accordingly.