(2009) 07 DEL CK 0159

In the Delhi High Court

Case No : Writ Petition (C) No. 5247 of 2008 and CM No. 10014 of 2008

Surender Kumar APPELLANT

Vs

State Bank of Mysore and Others RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17(1)

Citation : (2009) 07 DEL CK 0159

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Balvinder Ralhan, for the Appellant; J.L. Jain and A.N. Tiwari, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner is an auction purchaser of property which forms the subject matter of S.A. No. 24/2005 entitled Snehlata v. State Bank of Mysore which is a petition u/s 17(1) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 pending before DRT - I, Delhi. The petitioner sought impleadment in the said S.A. No. 24/2005. That was not acceded to by the DRT by virtue of its order dated 16.10.2006. Being aggrieved by the said order, the petitioner preferred an appeal being Miscellaneous Appeal No. 59/2007 in S.A. No. 24/2005 before the Debts Recovery Appellate Tribunal, Delhi. That was also dismissed by the order dated 09.05.2008. As per the impugned order, the sale in favour of the petitioner has not been confirmed and, as such, his right to participate in the S.A. had not crystallized. While dismissing the appeal, the Debts Recovery Appellate Tribunal made the following observations:

12. It is also noted from the reply filed on behalf of the respondents 3 to 5 herein (appellants in S.A.) that they have also deposited an amount equivalent to the bid money deposited by the present appellant (Rs. 23.10 lakhs). By order dated 23.3.2006, the Tribunal below directed the Bank to return the bid money to the

highest bidder. It has not been shown that the appellant challenged the said order before this Tribunal. If he has not taken back his bid money, then it is his own option that he wants to be in the fray on the expectation that the respondents 3 to 5 herein (appellants in S.A.) would fail and he would ultimately succeed in the sale being confirmed in his favour. But all such thinking or expectation does not back his insistence for being impleaded as a party in the S.A. pending before the Tribunal below, where, as I said, the principal question for decision is the scrutiny of the pre-auction action taken by the Bank qua the property in question.

13. In view of above discussion, I see no merit in this appeal and the appeal is hereby dismissed. The parties are directed to appear before the Tribunal below on 30.5.2008 for further progress in the case. The Tribunal below is directed to decide the S.A. as expeditiously as possible.

2. Before us, the learned Counsel for the petitioner submitted that the money deposited by the petitioner with the respondent No. 1 Bank has not yet been returned to the petitioner despite the fact that the sale has not been confirmed. The learned Counsel appearing for the respondent No. 1 Bank submits that the money has not been returned because the petitioner has not asked for its return and, secondly, because the money had not been received by it from the respondents 3 to 5 who are the heirs of the original borrower (Late Shri Jagbir Gupta). This submission of the learned Counsel for the respondent No. 1 has been countered by the learned Counsel appearing on behalf of the respondents 3 to 5 by referring to the affidavit filed on behalf of respondent No. 3 (Smt. Snehlata Gupta who is the widow of Late Shri Jagbir Gupta). In the said affidavit dated 21.03.2009, the orders passed by the DRT - I on 08.03.2006 and 23.03.2006 have been extracted. The first order dated 08.03.2006 clearly indicates that the property in question had been auctioned by the respondent Bank on 03.03.2006 and 25 per cent of the auctioned amount had been deposited by the auction purchaser (the petitioner herein). The respondent Bank was granted liberty to receive the balance amount from the highest bidder. However, the respondent Bank was directed not to confirm the sale till the next date. On 23.03.2006, the DRT - I passed an order indicating that the property had been auctioned for a sum of Rs. 23.10 lakhs and that now the respondent No. 3 was ready to pay the said amount. The said amount was tendered through four demand drafts of Rs. 1.9 lakhs, Rs. 6.2 lakhs, Rs. 9 lakhs and Rs. 3 lakhs totalling Rs. 20.10 lakhs. These demand drafts were dated 22.03.2006 and had been handed over by the counsel for the respondent No. 3 to the counsel for the respondent Bank. The DRT - I gave a specific direction that the said amount could be appropriated by the respondent Bank without prejudice to their rights and contentions. The said order dated 23.03.2006 also noted that by virtue of the earlier order dated 08.03.2006, there was a direction for not confirming the sale and that the sale had not been confirmed till date. It is in this context that the respondent No. 3 was directed to deposit the balance amount of Rs. 3 lakhs totalling Rs. 23.10 lakhs which was the amount offered by the petitioner. The

said sum of Rs. 3 lakhs was to be deposited by 31.03.2006. As per the counsel for the parties, it was deposited by that date. The said order dated 23.03.2006 clearly indicated that in case the amount was deposited by respondent No. 3 with the respondent Bank, the respondent Bank was to return the amount paid by the highest bidder immediately.

3. Unfortunately, the respondent Bank has not returned the bid amount to the highest bidder. The ground taken, as noted above, is that the highest bidder (petitioner herein) did not ask for the return of the said amount and secondly, that the amount was not received from the respondents 3 to 5. The above narration of facts clearly indicate that the demand drafts were tendered on 23.03.2006 itself and the responsibility for encashing the same and appropriating the same was clearly on the respondent Bank. The order dated 23.03.2006 had also placed the responsibility of returning the money to the petitioner. The respondent Bank cannot, therefore, be absolved of its liability to pay interest to the petitioner when the money is returned to him. Consequently, we direct the respondent Bank to return the entire sum of Rs. 23.10 lakhs deposited by the petitioner along with simple interest @ 8 per cent p.a. w.e.f. 22.03.2006. The said amount would be returned within one week to the petitioner. Apart from these directions, we are not inclined to interfere with the impugned order nor has the petitioner pressed for any other direction at this stage.

4. The writ petition stands disposed of.

5. Dasti.