(2020) 10 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition(C) No. 5561 Of 2019

UK Mechanical Engineering Pvt. Ltd — APPELLANT

Vs

Zonal Manager, Corporation Bank, Kankarbag, Main Road And Ors — RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 14
Constitution Of India, 1950 — Section 12

Citation : (2020) 10 JH CK 0004

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Kamal Bihari Panda, Shankar Singh, B.K.Mishra

Final Decision : Disposed Of

Judgement

1. The present case is taken up through video conferencing.

2. The present writ petition has been filed for issuance of direction upon the respondents specially the Chief Manager-cum-Authorized Officer, Corporation Bank, East Singhbhum, Jamshedpur (respondent no.3) to refund the consideration amount of Rs.56,85,000/- paid by the petitioner for purchase of the property measuring 3 kathas 8 dhur being the part of present survey plot no.1767 under Khata No.218 situated in Mouza - Dimna, Ward No.9, Jamshedpur (hereinafter to be referred as "the said property") with compound interest @ 18% with effect from the date of deposit till the actual date of payment. Further prayer has been made for issuance of direction upon the respondents to pay compensation for withholding the huge amount for more than three years without any fault on the part of the petitioner as during the said period, the petitioner has suffered mental agony as well as huge financial loss.

3. The brief facts of the case as stated in the writ petition is that the respondent no.3 invited online e-auction of the aforesaid property under the Securitization

and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 [in short to be referred as "the SARFAESI Act"] on 10.05.2016. The petitioner participated in the bidding process and deposited the bid increment amount along with earnest money deposit within the prescribed time and on completion of the bidding process, it was declared successful bidder. The petitioner was further directed to deposit the entire bid amount. Accordingly, the petitioner deposited the entire bid amount of Rs.56,85,000/- by way of three cheques within the stipulated time and thereafter requested the Branch Manager, Corporation Bank, Sakchi Branch, Jamshedpur by way of representation dated 25.10.2016 to hand over the said property. The petitioner again represented on 18.11.2016 and 05.12.2016 requesting inter alia for handing over the possession of the said property to it as per assurance that the possession of the said property would be given to it within 2-3 days from the date of deposit of final value of the property. The petitioner kept on requesting the respondents for handing over the possession of the said auctioned property between the period from 31.01.2017 to 15.11.2018, however the said request was not responded. The respondent no.3 vide letter dated 20.06.2019 informed the petitioner that an application for handing over the physical possession of the auctioned property to the petitioner was filed before the District Magistrate, East Singhbhum, Jamshedpur, however the same was denied by the said authority on 15.02.2019 on the ground that as per the government record, the said property is recorded in the name of Talmin Majhiyan a member of Scheduled Tribe and thus it comes under the purview of the Chota Nagpur Tenancy Act, 1908 (in short "the Act, 1908") and due to the said reason, the possession cannot be given as per the State Government's rule/direction. It was further informed by the respondent no. 3 through letter dated 20.06.2019 that request was made to the higher officers of the respondent-Bank to refund the said amount to the petitioner. Since then, the petitioner has been requesting the respondent-Bank for refund of the said amount, however they have sitting tight over the matter, which has compelled the petitioner to file the present writ petition.

4. Learned counsel for the petitioner submits that the respondent- Bank has misled the petitioner to participate in the auction process in which despite being successful bidder and even after depositing the entire bid amount of Rs.56,85,000/-, it has not been handed over the possession of the said property. Admittedly, the respondent-Bank is not in a position to hand over the possession of the land in question to the petitioner, however instead of refunding the said amount to the petitioner, the Bank authorities are making lame excuses. Withholding of the amount by the respondent-Bank is highly illegal, arbitrary, and whimsical. The respondent-Bank being a public sector Bank coming within the meaning of the State under Article 12 of the Constitution of India, cannot be allowed to indulge in devious and fraudulent practice to harass an ordinary citizen by making unjust enrichment. The respondent-Bank itself has violated the terms and conditions of e- auction notice issued under the provisions of the SARFAESI Act putting the property in question to auction without even taking

physical possession of the same. The respondent-Bank has received the total amount of Rs.56,85,000/- on 24.10.2016 from the petitioner, however has failed to provide the peaceful possession of the auctioned property to it and hence the respondent-Bank is under legal obligation to refund the said amount with suitable interest to the petitioner without any further delay.

5. Learned counsel appearing on behalf of the respondent-Bank submits that after receiving the sale consideration, the Bank applied before the District Magistrate, East Singhbhum, Jamshedpur for providing security and assistance under Section 14 of the SARFAESI Act for handing over the possession of the said property to the successful bidder, however the District Magistrate, East Singhbhum, Jamshedpur, after making inquiry from the concerned Circle Officer and Revenue Karamchari, passed an order on 15.02.2019 rejecting the application on the ground that the said property is recorded in the name of a tribal raiyat thereby coming under the purview of the Act, 1908 and hence handing over the physical possession of the said property cannot be allowed. Thereafter, the sale committee of the respondent-Bank in its meeting dated 17.09.2019 decided to refund the entire sale consideration to the auction purchaser (the petitioner herein), however due to technical reasons, the process was delayed as it was difficult to reopen the closed loan account of the borrower firm. The petitioner being the auction purchaser was informed through phone as well as e-mail dated 18.12.2019 regarding refund of the sale consideration and was required to provide its account number, however the same has not yet been provided by the petitioner. It is further submitted that the mortgaged property was put to auction sale on 14.06.2016 on "as is where is basis" and the petitioner had participated in the said auction process as per its own choice. Moreover, it has been stipulated under Clause- 19 of the sale notice that the intending bidder should make its own inquiry regarding the encumbrances as well as title over the property including claim/right/dues towards it.

6. Heard learned counsel for the parties and perused the materials available on record. The petitioner has prayed for issuance of direction upon the respondents to refund Rs.56,85,000/- which was paid by it as sale consideration being successful auction purchaser pursuance to e- auction notice dated 10.05.2016. It has been contended on behalf of the petitioner that the respondent-Bank has failed to hand over the physical possession of the said property to it. The said fact has not been denied by the respondent-Bank in its counter affidavit, rather it has been admitted that the possession of the said property could not be handed over due to the order passed by the District Magistrate, East Singhbhum, Jamshedpur denying approval for grant of possession of the said property as it comes under the purview of the Act, 1908. It has been stated by the respondent-Bank in its counter affidavit that the sale committee of the respondent- Bank had already decided to refund the sale consideration to the auction purchaser (the petitioner) and the said fact was duly informed to the petitioner, however in absence of availability of the Bank account number of the petitioner, the same could not be disbursed to it.

7. Having considered the rival contentions of the parties, I am of the view that the respondent-Bank is duty bound to refund the amount which was received from the petitioner in lieu of auction sale of the property in question pursuant to e-auction sale notice dated 10.05.2016 particularly keeping in view that the possession of the said property could not be handed over to the petitioner. It is not in dispute that the respondent-Bank itself had advertised the said property for auction sale, which has been recorded in the name of a member of a scheduled tribe and thus, the respondent-Bank is under legal obligation to immediately refund the sale consideration to the petitioner.

8. The petitioner has also prayed for grant of compound interest over the amount deposited by it before the respondent Bank at the rate of 18% per annum from the date of deposit till the date of actual payment.

9. In the case of State of Uttar Pradesh & Others Vs. Jaswant Sugar Mills Limited & Others reported in (2014) 16 SCC 760, under the background that the auction purchasers had deposited the auction amount within the stipulated period and the title of the land was also transferred in their favour, however the High Court subsequently cancelled the said auction and directed for refund of the deposited amount to the auction purchasers, the Hon'ble Supreme Court while framing the question for determination as to why the amount, which was directed to be refunded to the auction-purchasers, should not bear reasonable interest, has held as under:-

"35. In a situation like in the present case, one cannot hold of any statute entitling the auction-purchasers to claim interest, in case the auction got cancelled or set aside by the court of law. The counsel for the parties also could not refer to any of the clauses of auction prescribing interest on refund of amount in case of cancellation of auction or sale. The question arises as to whether in such a situation an auction-purchaser can claim interest on equitable grounds.

36. In State of Maharashtra v. Maimuma Banu [State of Maharashtra v. Maimuma Banu, (2003) 7 SCC 448] the question arose as to whether interest was payable on rental compensation. In the said case, the government resolution concerned provided for payment of rental compensation expeditiously but no provision was made to pay interest in case of delayed payment. This Court in the said case held: (SCC p. 452, paras 10-11) "10. The crucial question is whether there can be any direction for interest on rental compensation once it is held that the same has to be paid within the time-frame, notwithstanding the fact that there is no statutory obligation.

11. It is not in dispute that in certain cases payments have already been made. Though the inevitable conclusion is that the High Court is not justified in directing grant of interest on the logic of various provisions contained in the Act, yet there is an element of equity in favour of the landowners. It is, however, seen that the writ applications were filed long after the possession was taken. This factor

cannot be lost sight of while working out the equities. It would, therefore, be appropriate if the appellants pay interest @ 6% from 1-4-2000 till amounts payable as rental compensation are paid to the landowners concerned. This direction shall not apply to those cases where the payments have already been made prior to 1-4-2000. Appeals are allowed to the extent indicated without any stipulation of costs."

37. In the present case, we find that there was no misrepresentation on the part of the auction-purchasers; they deposited the total auction amount within the time stipulated. It has not been in dispute that the title of the land was also transferred in their favour. But for the reasons mentioned by the High Court the sale has been cancelled. It has been ordered to refund amount in favour of the auction-purchaser/appellant(s). We find no reason as to why on equitable grounds the appellants should not get interest on the said amount. Taking into consideration the aforesaid factor while working out equities, it would, therefore, be appropriate to direct the State to pay interest at the rate of 6% on the amount to be refunded as per the High Court's order with effect from 27-4-2001 and 3-9-2001, the day the High Court passed the impugned order. The respondents concerned are directed accordingly."

10. Having considered the petitioner's claim for payment of interest over the principal amount withheld by the respondent-Bank and keeping in view the aforesaid judgment rendered by the Hon'ble apex Court, I hold that the petitioner is entitled for refund of Rs.56,85,000/- deposited by it with the respondent-Bank, along with the interest at the rate of 6% per annum from the date of deposit till the date of the said refund.

11. Hence, the respondent-Bank is directed to refund Rs.56,85,000/- along with interest at the rate of 6% per annum from the date of deposit of the said amount till the date of its payment/refund. However, if the respondent-Bank fails to make such payment within a period of 30 days from the date of receipt/production of a copy of this order, it shall be liable to pay compensatory interest at the rate of 10% per annum thereafter.

12. The writ petition is, accordingly, disposed of with aforesaid observation and direction.