

Court No. - 3

Case :- WRIT - C No. - 7657 of 2023

Petitioner :- Divakr Patel

Respondent :- Bank Of Baroda Managing Director And
Ceo And 4 Others

Counsel for Petitioner :- Ajeet Kumar Singh,Vishal
Kumar Srivastava

Counsel for Respondent :- Prashant Kumar Srivastava

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

Heard learned counsel for the parties and gone through the record.

Petitioner has approached this Court challenging the order dated 25.08.2023 passed by the Authorized Officer of the respondent-Bank of Baroda whereby he has cancelled the e-auction dated 01.08.2023 and any subsequent actions thereafter due to technical reasons. Petitioner claims to be auction purchaser of the same in e-auction held on 01.08.2023 for a sum of Rs. 1,40,42,000/-. As per the terms of the e-auction, 25 % of the amount has been deposited and he is always ready and willing to pay the remaining amount. The aforesaid 25 % of the amount deposited by the petitioner was returned by the Bank in furtherance of the impugned order dated 25.08.2023. Today, counsel for the petitioner to show bonafide is also present with the demand draft of the aforesaid 25 % of the amount.

On merit, counsel for the petitioner submits that there is no reason given in the order dated 25.08.2023 and only basis of cancellation is "due to technical reasons".

Learned counsel for the respondent-Bank on instructions states that the e-auction was cancelled as the borrower had returned the entire amount.

Counsel for the petitioner opposing the same places reliance upon the judgment of Hon'ble Supreme Court in the case of **CELIR LLP vs. BAFNA MOTORS (MUMBAI) PVT. LTD.** passed on 21.09.2023 in Civil Appeal Nos. 5542-5543 of 2023.

In the aforesaid judgment, Hon'ble the Supreme Court has settled that once notice for auction is issued, thereafter Borrower has no right to deposit the amount and clear his

dues. The right of the Borrower is only till before the notice for auction is issued by the Bank. In this case, admittedly, not only the notice was issued but also auction had taken place and 25% of the amount was also deposited and, thereafter, Bank has accepted money from the Borrower. Therefore, the Bank could not have cancelled the auction which was already held by the impugned order dated 25.08.2023. Thus, the order dated 25.08.2023 passed by the Authorized Officer of the respondent-Bank of Baroda is set aside.

Learned counsel for the petitioner has also handed over the aforesaid demand draft of 25% of the amount to the counsel for the Bank today in Court which he has duly accepted. Petitioner shall approach the respondent no. 3 i.e. Chief Manager/Authorised Officer, Bank of Baroda, Vipul Khand, Gomti Nagar, Lucknow along with the remaining sale consideration within a period of two weeks from today on which respondent no. 3 shall pass appropriate order and take appropriate steps in accordance with law.

Writ petition is accordingly allowed.

(Manish Kumar, J.) (Vivek Chaudhary, J.)

Order Date :- 10.10.2023

Nitesh