IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 23910 of 2008 (U)

PETITIONER(S):

ROSHEN K.BABU,SON OF SRI.C.P.BABU,
AGED 30 YEARS, KURUMUTTATHU HOUSE, THIRUVALLA P.O
PIN - 689 101.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR

RESPONDENT(S):

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1. VIJAYA BANK,THIRUVALLA BRANCH,
VENGAL BUILDING, CROSS JUNCTION, M.C ROAD
THIRUVALLA REP.BY ITS MANAGER.

2. AUTHORISED OFFICER,VIJAYA BANK,
THIRUVALLA BRANCH, VENGAL BUILDING, CROSS JUNCTION,
M.C ROAD, THIRUVALLA.

BY SRI.R.S.KALKURA, STANDING COUNSEL, VIJAYA BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23910 of 2008 (U)

APPENDIX

Ext.P1- TRUE COPY OF THE NOTICE DT.14.5.08 ISSUED BY THE 2ND RESPONDENT INVITING TENDER FOR SALE OF PROPERTY

Ext.P2- TRUE COPY OF THE RECEIPT DT.24.6.08 ISSUED BY THE 2ND RESPONDENT FOR PAYMENT OF RS.25,000/-.

Ext.P3- TRUE COPY OF THE RECEIPT DT. 24.6.08 ISSUED BY THE 2ND RESPONDENT FOR PAYMENT OF RS.310250/-

Ext.P4- TRUE COPY OF THE LETTER DT.25.6.08 ISSUED BY FIRST RESPONDENT

Ext.P5- TRUE COPY OF THE PLAN ISSUED BY THE VILLAGE OFFICER NEDUMPURAM DT.24.9.07 SHOWING THE SKETCH AND SY.NO. OF THE PROPERTY

Ext.P6- TRUE COPY OF THE LAWYER NOTICE DT.8.7.08 ISSUED FOR AND ON BEHALF OF THE PETITIONER

Ext.P7- TRUE COPY OF THE REPLY LAWYER NOTICE DT.12.7.08 ISSUED ON BEHALF OF THE RESPONDENTS

Ext.P8- TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED BY SRO,KADAPRA DT.29.7.08

RESPONDENTS'EXHIBITS: NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

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W.P.(C) No.23910 of 2008

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Dated this the 18th day of December, 2015.

JUDGMENT

The petitioner was a successful bidder in a sale conducted by the respondent bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI Act')and the Rules framed thereunder. The auction was conducted pursuant to Ext.P1 notice inviting tender. The petitioner had deposited Rs.25,000/- and Rs.3,10,250/- as per Exts.P2 & P3, as initial deposits and 25% payment, in compliance with the tender conditions. The auction was held on 24.6.2008 and the petitioner was the highest bidder who bid the property for Rs.13,41,000/-. According to the petitioner, he has remitted a total amount of Rs.3,35,250/- including earnest money deposit of Rs.25,000/- and the same is evidenced by Exts.P2 and P3 and the balance amount had to be remitted within 15 days from 24.6.2008. Thereafter, on enquiry it was understood that the property offered for sale, though stated as 10.55 cents, was only 7.61 cents and the same is evidenced by Ext.P5. According to the petitioner, it was clear that the property offered by the respondent bank did not have the required extent and there was misrepresentation on their part. Hence the petitioner did not pay the balance amount and issued notice dated 8.7.2008 through the counsel calling upon the respondents to refund the amount paid as there was a misrepresentation on the part of the respondents in effecting sale of the property under the 'SARFAESI Act'. But the return of deposit which he had claimed was denied by Ext.P7 reply notice sent by the respondent bank. Subsequently, on enquiry, it came to the notice of the petitioner that there were several attachments against the said property as per orders in O.S.Nos.84/04, 301/05 and 621/05. All the attachments are evidenced by Ext.P8. Thus, the illegality or irregularity in the manner of notifying and conducting sale have resulted in gross injustice and loss to the petitioner. So, the decision of the respondents in forfeiting the amount paid by the petitioner is arbitrary, unreasonable and illegal. This is the grievance highlighted in this writ petition. The petitioner prayed for issuing a direction to the respondent bank to refund the amount received from the petitioner as per Exts.P2 and P3 with interest from the date of deposit.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent bank.

3. The learned counsel for the petitioner advanced arguments contending that the 1st respondent, being a nationalised bank, is amenable to writ jurisdiction and an act of illegality and cheating committed by the respondent bank can be challenged under Article 226 of the Constitution of India also. It is submitted that the petitioner participated in the auction believing that the total extent of the property is 10.55 cents and he deposited an amount of Rs.3,35,250/- under Ext.P2 & P3 as per the terms and

conditions of the auction proceedings and subsequently he came to know from Ext.P5 that the total extent of the property is only 7.61 cents. Thus, the respondent bank has cheated him by way of misrepresentation and thereby he has the right to repudiate the contract and he is entitled to get back the amount, which was deposited by Exts.P2 & P3.

4. Per contra, the learned Standing Counsel for the respondent bank advanced arguments contending that there is no reason to interfere with the auction proceedings initiated under Ext.P1 invoking jurisdiction under Article 226 of the Constitution of India. In short, this Court has no jurisdiction to interfere with the auction proceedings which were initiated on mutual agreement between the parties under Ext.P1 terms and conditions of the contract. Further, the learned Standing Counsel invited my attention to the 6th paragraph of Ext.P1 and contended that even according to the terms and conditions specified in Ext.P1 in the said paragraph, the respondent bank or the authorised officer will not be

responsible for any charge, lien, encumbrance, property tax or any other dues to the Government or any body in respect of the property under sale. The learned Standing Counsel further invited my attention to paragraph- 3 of Ext.P1 also.

5. In view of the submissions made at the Bar, the preliminary question to be considered is whether this Court has jurisdiction to interfere with the auction proceedings initiated under Ext.P1 invoking jurisdiction and power under Article 226 of the Constitution of India.

6. It is the case of the petitioner that he participated in the auction proceedings under Ext.P1 on the belief that the property is having a total extent of 10.55 cents and after depositing the earnest money he came to know that the property is having 7.68 cents only and thereby the respondent bank cheated him by way of misrepresentation and in such circumstances he has the right to withdraw from further performance of the contract and he is entitled to get back the money which he had deposited under Exts.P2 & P3.

7. Per contra, the sum and substance of the case of the respondents is that it was obligatory on the petitioner to enquire about the full details of the property including the extent and other details of encumbrance and liabilities on the property, before making the offer, in view of Ext.P1.

8. As rightly submitted by the learned Standing Counsel, in paragraph-3 of Ext.P1 it is stated that sealed tenders are invited from interested parties for the purchase of the above mentioned immovable property on "AS IS WHERE IS" condition. In paragraph-6 of Ext.P1, it is further stated that the Authorised officer/bank will not be responsible for any charge, lien, encumbrance, property tax or any other dues to the Government or any other body in respect of the property under sale. The extent/description of the property is shown in the proclamation of sale, as per the records available with the bank, and the bank/authorised officer will not be responsible for any variation due to any reason. In my view, these clauses are incorporated in Ext.P1, with an intent to alert the

prospective bidders as to make sufficient enquiry as regards extent and liabilities over the property before entering into bidding.

9. In view of the aforesaid clauses, I find that it was obligatory on the part of the petitioner to make sufficient enquiry as regards the extent of the property and the lien, charge, encumbrance and other liability of the property, before participating in the auction proceedings. In Ext.P1, the respondent bank has, without any ambiguity, shouldered the liability on the bidder, in case any reduction in the extent of property or encumbrance, if any, is found subsequently. In the above view of the matter, I find that there is no merit in the contention that the respondent bank cheated the petitioner by way of misrepresentation. I do not find any reason to interfere with the proceedings under Ext.P1, invoking jurisdiction and power under Article 226 of the Constitution of India. The entitlement of refund is a matter in issue to be decided by civil court and this judgment will not stand in the way of such

proceedings. This writ petition is devoid of merits and dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.