IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5703 OF 2015

Tirupati Rice Mills Pvt. Ltd. … Petitioner
Vs
Central Bank of India & Anr. ... Respondents

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Mr. Rushabh Shah a/w Ravi Datar i/b M/s. Raval Shah & Associate, for the Petitioner.
Ms. Sapna Rachure i/b. M/s. T.N. Tripati, for the Respondent No. 1.

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CORAM: DR. MANJULA CHELLUR, C. J. AND M.S. SONAK, J.
DATE : 20th SEPTEMBER, 2016

P. C.:

1. Heard the learned counsel for the parties.

2. Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The challenge in this petition is to the order dated 11th September, 2013 made by the Debts Recovery Appellate Tribunal (“DRAT”), at Mumbai dismissing the Petitioner's appeal against order dated 27th July, 2007 made by the Debts Recovery Tribunal (“DRT”).

4. Since, M/s. Fraternity Electronics Limited and others (Respondent No. 2) defaulted in repayment of loan to the Central Bank of India (Respondent No. 1), Recovery Proceedings No. 60 of 2003 came to be instituted by the Bank before the DRT. The DRT issued recovery certificate and in pursuance thereof, attached and put for sale the property which had been mortgaged by the Respondent No. 2 i.e. factory premises at Gaziabad Noida, U.P. (hereinafter referred to as the said "Property").

5. In pursuance of the auction notice, the Petitioner was adjudged the highest bidder in the year 2007. The Petitioner had submitted a bid in an amount of Rs. 3.40 crores. On 17th January, 2007, the Petitioner deposited an amount of Rs. 70 lacs, which, when considered along with the earnest money deposit of Rs. 15 lacs, together amounted to Rs. 85 lacs corresponding to 25% of the sale price. In terms of the auction conditions, as also the law, the Petitioner was required to deposit the balance sale price corresponding to 75% of the sale price on or before 31st January, 2007.

6. The Petitioner failed to deposit the 75% of the balance sale price on

31st January, 2007 before the Recovery Officer. On the said date however, the Petitioner applied for extension of 15 days to deposit the balance sale price. Although, the Recovery Officer had no jurisdiction to entertain any such applications for extension, the Recovery Officer did granted extension of 15 days as applied for. Even, during the extended period, the Petitioner, failed to deposit 75% of the sale price and some further time was spent in order to ascertain whether deposit was made by the Petitioner. However, finally, the Recovery Officer on 14th March, 2007, upon noting that the Petitioner had failed to pay the balance sale price Rs. 2.25 crores, proceeded to cancel the sale and issued show cause notice to the Petitioner as to why 25% of the sale price i.e. Rs. 85 crores, be not forfeited.

7. The Petitioner, under the guise of responding to the show cause notice dated 3rd April, 2007 issued by the Recovery Officer, applied to the Recovery Officer seeking further extension of time of 45 days to deposit 75% of the sale price, which had remained unpaid. In the alternate, the Petitioner applied for refund of Rs. 85 lacs, in case, the Petitioner's application for extension was not to be favorably considered.

8. The Recovery Officer, again, in excess of the jurisdiction vested in him granted extension to the Petitioner, subject to the Petitioner paying further amount of Rs. 9.35 lacs towards interest on delayed payment, costs and other charges. The Petitioner is stated to have paid an amount of Rs. 10 lacs towards interest on delayed payment costs and the charges. However, once again there was default in payment of the balance of the purchase price of 2.25 crores even within the extended time.

9. In the aforesaid circumstances, the Recovery Officer made an order dated 14th May, 2007 which reads thus:

> *"The application of the Auction Purchaser for reimbursement of the amount deposited is disallowed and a sum of Rs. 85 lacs less the advertisement and other cost incurred by the CH Bank is forfeited for appropriation against the certified dues.*
> *The amount of Rs. 10 lacs deposited by the Auction Purchaser as interest and advertisement charges is allowed to be refunded as the expenses etc. incurred by the bank are liable to be recovered from the 25% amount i.e. Rs. 85 lacs deposited by the Auction Purchaser earlier.*
> *The prayer for allowing further extension of 45 days is disallowed and it does not fall within the jurisdiction of this forum.*
> *The application of the defendants and the proposed intervener (Proposed purchaser) are disposed with this order".*

10. The Petitioner, aggrieved by the aforesaid order dated 14th May, 2007 made by the Recovery Officer, instituted Appeal No. 42 of 2007 under section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short, the RDDB and F.I. Act) before the DRT. By order dated 27th July, 2007, the DRT dismissed the appeal.

11. The Petitioner thereafter preferred Appeal No. 303 of 2007 before the DRAT, which has since been dismissed by the impugned order dated 11th September, 2013.

12. Mr. Rushabh Shah learned counsel for the Petitioner has submitted since the Recovery Officer granted extension beyond the stipulated period of 15 days for deposit of 75% of the sale price on more than two occasions, the Petitioner cannot be now held to the rigours of forfeiture though prescribed in the terms of the auction. On this basis, Mr. Rushabh Shah submitted that the provision for forfeiture did not hold good and the subsequent orders for forfeiture are without jurisdiction. In any case, Mr. Rushabh Shah submitted that the amount of Rs. 10 lacs deposited by the

Petitioner towards interest for delayed payment was required to be refunded to the Petitioner.

13. Ms. Sapna Rachure, the learned counsel for the Petitioner submitted that the Recovery Officer had no authority to extend the time and since, despite availing the extensions, the Petitioner failed to pay the balance sale price of Rs. 2.25 crores, the Recovery Officer was justified in forfeiting the amount of Rs. 85 lacs. Mr. Sapna Rachure placed reliance upon the decision of the Supreme Court in the case of ***C. N. Paramsivan and Anr. Vs. Sunrise Plaza, Tr. Partner & Ors.***[1] to submit that the provisions with regard to deposit of the balance purchase price within the stipulated period are mandatory and upon failure, forfeiture is the only result.

14. Ms. Sapna Rachure also fairly pointed out that the forfeited amount was paid to the Bank and aggrieved by such payment, the Union of India through Commissioner of Income Tax-6, at Mumbai has instituted Appeal No. 483 of 2014 before the DRT and that such appeal is pending adjudication. Ms. Sapna Rachure submitted that the amount of Rs. 85 lacs

1 AIR 2013 SC 2941

has been appropriated by the Bank towards the loan dues of the Respondent No. 2.

15. We are satisfied that the Recovery Officer had no jurisdiction to grant any extension of time to the Petitioner in the matter of deposit of the balance sale price. In this case, despite availing the extensions, the Petitioner, failed to pay the balance purchase price and therefore, the amount of Rs. 85 lacs was rightly ordered to the forfeited. The Petitioner, who obtained the extensions, although, not entitled to such extensions, cannot at this stage, contend that the rigours with regard to forfeiture stood waived. In this case, we are not concerned merely with the terms of auction but also statutory provisions which prescribed time limits for deposit of the balance amount and provide for forfeiture where such deposit is not made within the stipulated period.

16. In the case of *C.N. Paramisvan & Anr. Vs. Sunrise Plaza (Supra)* the Hon'ble Supreme Court has held that the provision with regard to deposit the balance of the sale price are mandatory. Accordingly, we find no error

whatsoever in the reasonings of the Recovery Officer, the DRT and finally the DRAT on the aspects of forfeiture of Rs. 85 lacs is concerned. There is no case made out to interfere with the impugned order.

17. In so far as the amount of Rs. 10 lacs deposited by the Petitioner towards interest for delayed payment and cost is concerned, the Recovery Officer in his order dated 24th May, 2007 has directed that such amount be refunded to the Petitioner. The bank had not challenged this portion of the Recovery Officer's order before the DRT or the DRAT. As such, this portion of the order has attained finality. Consistent with the same therefore, the bank is required to refund to the Petitioner the amount of Rs. 10 lacs as directed by the Recovery Officer.

18. Although, we are satisfied that this was a fit case for ordering forfeiture, we fail to understand as to how the forfeited amount, in the facts and circumstances in the present case, could have been made over to the Respondent-Bank. Such amount, at least *prima facie,* was required to be paid to the Union of India. Since, Appeal No. 483 of 2014 instituted by

Union of India in this regard is pending before the DRT, we direct the DRT to dispose of the same as expeditiously as possible and in any case within a period of four months from the date of production authenticated copy of this order. The Registry is directed to forward a copy of this order to the DRT at Mumbai taking up Appeal No. 483 of 2014 within a period of 15 days from today. The DRT to dispose of the Appeal No. 483 of 2014 as expeditiously as possible and, in any case, within a period of four months from the date of receipt of authenticated copy of this order.

19. Upon cumulative consideration of the aforesaid facts and circumstances, we see no reason to interfere with the impugned order. This petition is dismissed. Rule is discharged. Interim order, if any, stand vacated. There shall be no order as to costs.

CHIEF JUSTICE

(M.S. SONAK, J.)