

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15902 of 2017

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1. Md. Saleem Rizvi , son of Md. Nayee, resident of Hotel Daisy, 6 Complex, Dariyapur, Baripath, Patna.
 2. Safia Bani, wife of Saleem Rizvi, resident of Hotel Daisy, 6 Complex, Dariyapur, Baripath, Patna.
 3. Shabistan Saleem @ Sabistan Saleem, Daughter of Md Saleem Rizvi, resident of Hotel Daisy, 6 Complex, Dariyapur, Baripath, Patna.

.... Petitioners

Versus

1. State Bank of India Stressed Assets Resolution Centre Branch situated in Patna Main Branch, Patna, through the Assistant General Manager.
2. HDFC Bank Ltd. Rani Plaza, 2nd Floor, Exhibition Road, Patna through the Branch Manager.
3. Punjab and Sindh Bank, Haziganj, Patna City, Patna, through the Branch Manager.
4. Committee of All Lenders, represented through its Presiding Member, being State Bank of India (Assignee ARCIL), Punjab and Sind Bank and HDFC Bank Ltd. at 3rd Floor, Rajendra Ram Plaza, Exhibition Road, Patna 800001 having its registered office at the Ruby, 10th Floor, 28, Senapati Bapat Marg, Dadar (West), Mumbai and contact address Room No. A/11,8th Floor, Chatterji International Centre, 33A. J.L. Nehru Road, Kolkata.

.... Respondents

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Appearance:

For the Petitioners	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Advocate
For the ARCIL	:	Mr. Sanjeev Kumar, Advocate
For the HDFC	:	Mr. Sandeep Kumar, Advocate
For the PNB	:	Mr. R.C. Narayan, Advocate Mr. Durgesh Nandan, Advocate
For the SBI	:	Mr. Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-03-2018

Heard learned Senior Counsel for the petitioners and
learned counsel appearing on behalf of the respondents.

The present writ petition has been filed for the following
reliefs —



- (i) *For quashing the public notice issued by the respondent nos. 1 to 3, through the respondent no. 4 regarding auction-cum-sale of the properties and published in Times of India, Patna Edition, dated 10.10.2017, as contained in Annexure-2 to this writ application.*
- (ii) *Also for restraining the respondents from holding any auction-cum-sale of the property detailed therein pursuant to the public notice, as contained in Annexure-2 to this writ application.*
- (iii) *Also for any other appropriate relief(s) to which the petitioner is found entitled either in the eye of law or in the facts and circumstances of the case.*

2. The short facts of the case according to the petitioners are that they are the joint owners of a multi-storied building named Dazy Commercial Complex constructed on a piece of land of Tauzi No. 641/643, New Holding No. 140/118, Street No. 69, Circle No. 20 (old) & 17A (New), Plot No. 1258, 1259 and 1260 situated at Mouza-Dariyapur Sher, Mohalla-Bari Path, P.S. Pirbahore, Town and District Patna. Three loans variously from the State Bank of India (SBI), HDFC Bank Limited (HDFC) and Punjab & Sindh Bank were taken against the property. Litigation ensued and several writ petitions were also filed before this Court. In the result, the recoverable amount from the said three banks was finally fixed in lump sum at Rs. 1,05,00,000/-, Rs. 82,00,000/- and Rs. 51,00,000/- respectively, (aggregate recoverable came to Rs. 2,38,00,000/-). By order dated 07.05.2014 passed in CWJC No. 15791 of 2012 (Md. Saleem Rizvi vs. HDFC Bank Limited) and analogous cases, this Court, *inter alia*, directed as follows —



“Considering the fact that the State Bank of India has proceeded in the matter by approaching the D.R.T. at the stage of recovery proceedings whereas the H.D.F.C. Bank has proceeded under the SARFAESI Act and it is not in dispute that the State Bank of India has the first charge over the property in question, it would be appropriate that the sale of the property in question is conducted by a Committee of two officers authorized one each by the State Bank of India and the HDFC Bank, which shall be presided over by the officer authorized by the State Bank of India. The Committee shall proceed to have each floor of the building in question separately valued by approved valuer in consultation with the petitioner and after the valuation is made shall proceed to sell only such floors of the premises part wise or in such other manner which may be found advisable, so as to leave the remaining property for the benefit of the petitioners. Whatever recovery is made on the sale shall be shared proportionately by the State Bank of India and the HDFC Bank Ltd. in the ratio of 105:82. It is further made clear that the amounts in question would be in full and final satisfaction of the claims of the banks and no further amounts would be payable.

Let the petitioners approach the authorities of the HDFC Bank on 19.5.2014 at 11 A.M. whereupon the authorities of the HDFC Bank shall ensure that the seal of the property is opened for a limited period to enable the petitioners to remove their belongings from the building in question within a reasonable time. The petitioners must ensure that sufficient



number of labourers, etc. is arranged by them so that the property can be removed within 12 hours of the bank opening the seal of the building for them to remove the articles. The Bank shall be free thereafter to again seal the premises. After the sale is completed and the dues of the banks are realized then the remaining unsold building of the petitioners shall be handed over jointly to them."

The aforesaid order was subsequently modified in view of the subsequent observations made by order dated 19.11.2014 in CWJC No. 6995 of 2014 (Md. Saleem Rizvi vs. The Union of India and ors.) as follows –

"In the aforesaid circumstances, it is directed that in continuance of the order dated 7.5.2014 passed in CWJC No. 15791/2012 and its analogous cases, the number of members of the Committee shall be increased to three officers by including also one officer authorized by the Punjab and Sind Bank, but continue to be presided over by the officer of the State Bank of India and proceed with the work of putting the property on sale and recover the dues of the three banks.

It is further pointed out to this Court that as yet no sale has been made of the property. It is, therefore, further directed that any amount that is recovered from the sale of the property shall be shared proportionately by the State Bank of India, HDFC Bank and the Punjab and Sind Bank in the ratio of 105:82:51 and the amounts in question as offered by the Bank and accepted by the petitioner shall be in full and final satisfaction of the claim of the Punjab and Sind Bank and no further amount would be payable."



The petitioner filed a contempt petition in MJC No. 662 of 2015, *inter alia*, agitating the low valuation of the property arrived at by the two valuers of the SBI and HDFC bank at Rs. 4,16,01,001/- and Rs. 3,80,24,805/- respectively, as against the market valuation of Rs. 7,23,45,000/- arrived at by the valuer appointed by the petitioners. It was urged that even the subsequent valuation made at Rs. 3,85,76,200/- by the empanelled valuer appointed by the SBI was still far lower than the valuation assessed by the petitioners' valuer. This Court, however, dismissed the contempt petition by order dated 15.11.2016 observing that mere low valuation did not amount to violation of the order of the Court. It also noticed the submission made by Mr. Sanjeev Kumar, Advocate that the assets in question had been assigned by SBI to the Assets Reconstruction Company (India) Limited ("ARCIL" for short).

Petitions were filed in MJC No. 670 of 2016 (State Bank of India vs. Md. Saleem Rizvi and ors.) and MJC No. 3669 of 2016 (Assets Reconstruction Company (India) Limited vs. Md. Saleem Rizvi and ors.) with a prayer for modification of the order dated 07.05.2014 and the order dated 19.11.2014. These were disposed of by a common order dated 17.04.2017 modifying the order dated 19.11.2014 "to the extent that in place of Committee headed by the State Bank of India, it is substituted as Assets Reconstruction Company (India) Ltd."



3. Mr. J.S. Arora, learned Senior Counsel appearing for the petitioners submits that the impugned auction-cum-sale notice published on 10.10.2017 is wholly arbitrary, illegal and contrary to the directions of this Court passed in its order dated 07.05.2014 in CWJC No. 15791 of 2012 as aforesaid, in which clear direction had been issued for each floor of the seven storied commercial building to be separately valued and thereafter to sell only such floors of the premises part-wise or in such manner which may be found advisable, so as to leave the remaining property for the benefit of the petitioners. It had further been observed that the remaining unsold portion of the building should be handed over jointly to the petitioners. In the instant case, a mere reference to the auction-cum-sale notice dated 10.10.2017 discloses that the Committee of the respondent-lenders were seeking to sell the entire property for a consolidated reserve price of Rs. 3,61,64,263/- as a whole and not floor-wise. Moreover, on the face of it, the reserve price itself being higher than the aggregate of the dues recoverable from the petitioners standing at Rs. 2,38,00,000/- shows that it was not at all necessary to sell the entire property and some part of it could have been left out for the use of the petitioners. Attention has been drawn to the objections dated 30.10.2017 (Annexure-4/A) against the auction-cum-sale notice, *inter alia*, pointing out that the value of the building was worth several crores of rupees whereas the



recoverable loan was on the lower side. In view of the specific directions of this Court in its order dated 07.05.2014 and in the subsequent orders, it was requested that the Committee act strictly in terms of the said order, violation of which would be liable for contempt. It was pointed out that the auction sale of the entire building as a whole would be an action beyond the competence and authority of the respondents.

4. Learned counsel for the respondent-ARCIL has vehemently opposed the writ petition, submitting at the outset that the conduct of the petitioners clearly shows that they have been obstructing recovery of the loan on one specious and frivolous pretext or another. It is pointed out that as a matter of fact, the orders of this Court were duly complied with and floor-wise valuation was made by the valuers appointed by the SBI and the HDFC bank as evident from the proceedings of the meeting dated 26.08.2014, which were supplied to the petitioner no. 1 who was present in the meeting, for his opinion, pursuant to which he submitted a valuation report of his own valuer dated 06.09.2014 communicating that he was not ready for the auction sale at a much lower price. The valuation report submitted by the petitioner no. 1 was not found acceptable by the respondent-Committee and hence it was decided in its meeting dated 09.09.2014 to grant an opportunity to him to choose any one of the valuers from the empanelled list of valuers. The



petitioner no. 1 however, failed to participate in the proceeding despite invitation, leading to the inference that he was making all attempts to stall the process of sale. Even so, the Committee then appointed another empanelled valuer namely, Er. Sanjay Kumar, for making a fresh valuation. In due course, a fresh valuation report from the said Er. Sanjay Kumar was received and an opportunity was granted to the petitioner no. 1 through his Advocate in the meeting dated 17.01.2015 for his views with regard to fixation of reserve price. The Committee took note that ample opportunity had been provided to the petitioner no. 1 to take his belongings in compliance of this Court's orders, but he had not turned up.

With regard to the floor-wise valuation of the property, the petitioner no. 1 had objected to the valuation as being on the lower side as compared by the valuation made by his own valuer. The Committee however, finding the petitioners' valuation unrealistic, then took a unanimous decision to proceed with the auction sale, finding that the petitioner no. 1 has been obstructing the sale of the secured assets through all possible means and delaying the process of recovery. The petitioner no. 1 was also invited to bring buyers any time prior to the public auction and to liquidate the dues before the date of auction. It was noted that for the past nine months, the petitioner no. 1 had not come forward with any proposal to deposit the outstanding dues of the bank in order to



save his property rather he had been non-cooperative.

It is further submitted that even otherwise, the contention of the petitioners that the sale of the entire property as a whole and not floor-wise is unauthorized, is wholly misconceived and based on a misreading of the order dated 07.05.2014 passed by this Court. It is submitted that the respondents were directed to sell the floors of the premises part-wise or in any such other manner which may be found advisable, meaning thereby that selling the property floor-wise was one option, the other being a sale in such other manner as may be found advisable. It is submitted that in the present case, it was found difficult to sell the property floor-wise and hence it was decided to sell the entire property as a whole. Only one prospective buyer finally responded to the auction-cum-sale notice, to whom the property has been finalized to be sold.

It is, therefore, submitted that the only objection that the petitioner no. 1 had ever raised all through, was with regard to the difference in valuation and that he was not prepared to sell the property at a price much lower than the valuation made by his own valuer. It is pointed out that when the petitioner had approached this Court for initiating a contempt proceeding in MJC No. 662 of 2015, he had raised not only the issue with regard to low valuation, but also a specific objection in para 11 thereof that the Committee had decided to sell the building as a whole on the basis of valuation



report of Er. Sanjay Kumar and for which a sale notice had been sent to him by letter dated 17.02.2015. The contempt petition was however, dismissed by this Court in its order dated 15.11.2016. As such, the petitioner cannot be permitted to raise this issue all over again in the present writ petition.

5. Learned counsel for the respondent-SBI had nothing to add submitting that the assets in question has already been assigned to ARCIL.

6. Learned counsel for the Punjab National Bank adopted the arguments made on behalf of ARCIL.

7. Learned counsel for the HDFC bank also adopted ARCIL's arguments, adding that in the meeting of the Committee held on 04.08.2017 soon before publication of the auction-cum-sale notice, the petitioner no. 1 had appeared and requested to postpone the auction publication for at least one month, if not for three months, to enable him to settle the account. This request was acceded to and the publication was held back for a period of one month till 18.09.2017. The petitioner no. 1 also gave assurance not to proceed with any legal proceeding during the said period. It is therefore, submitted that even at this belated stage, the petitioners never raised any objection with regard to sale of the entire building to which they had acquiesced. It is only as a last ditch effort that the petitioners are once again seeking to delay and defer the auction



sale by taking an objection at the last minute after the sale has been made pending its confirmation, as directed by this Court.

8. In reply, learned Senior Counsel for the petitioners refers to the third supplementary affidavit filed by him in course of arguments to submit that even though the floor-wise valuation was done, no material has been brought on record to show that the building could not be sold floor-wise or that any attempt was ever made in this direction.

9. Having heard the parties and on a consideration of the materials on record, this Court finds that in its order dated 07.05.2014 this Court had expressed that the valuation of the property be made floor-wise and thereafter, to sell only such floors or in any such other manner as may be found advisable so as to leave the remaining property for the benefit of the petitioners. The Committee convened its meetings in which the petitioner no. 1 was invited and he participated through his representative Advocate from time to time, but later on took a non-cooperative stance and stopped attending the meetings. The Committee, on the other hand, took adequate steps for proper valuation of the property to satisfy itself with regard to the correctness of the valuation submitted by the petitioner's valuer. The petitioners all through raised objection only on the solitary ground that the valuation made by the valuers appointed by the SBI was low but not against the sale of the entire



building as a whole. It is even more significant to take note that only upon receiving the sale notice vide letter dated 17.02.2015 with regard to the Committee's decision to sell the building as a whole on the basis of the valuation report of Er. Sanjay Kumar for Rs. 3,85,76,200/-, a specific objection was finally raised by the petitioner no. 1 in his contempt petition in MJC No. 662 of 2015 to this effect, but the contempt petition was dismissed. The petitioner no. 1 neither filed a review petition nor took any further action in the matter and the order dated 15.11.2016 passed in the contempt petition attained finality. It is only after publication of the auction-cum-sale notice on 10.10.2017, namely almost a year later, that the petitioners are seeking to rake up the same issue which was raised in the contempt petition but not entertained by this Court. In other words, this Court in the contempt proceedings did not find that its orders dated 07.05.2014 and 19.11.2014 had been violated. The prayer of the petitioners in this instant writ petition is founded on the same contention that the auction-cum-sale notice has been issued in violation of the said orders of this Court, which must therefore be held to be devoid of merit.

10. This Court is of the view that in such circumstances, the petitioners ought not to be permitted to raise the issue relating to sale of the entire property as a whole, and not floor-wise, at this belated stage, which is being resorted to clearly with the view to



further delay the matter and obstruct recovery of the outstanding dues admittedly owing by the petitioners.

11. This Court is therefore not inclined to interfere in the matter. The writ petition stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.03.2018
Transmission Date	NA

