

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO.1893 OF 2018

M/s.K.K.Enterprises

...Petitioner

v/s.

Union Bank of India

...Respondent

...

Mr.Rajesh Nagory with Mr.Saurabh Bachawat and Mr.Vinod Kothari i/b Apex Law Partners for the Petitioner.

Mr.Rohit Gupta a/w Mr.Jay Sanklecha & Mr.Anup Khaitan i/b Anup Khaitan & Co. for the Respondent.

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CORAM : A.A. SAYED &

V.L.ACHLIYA, JJ.

DATED : 12 JUNE 2018

P.C.:

The Petition is filed by the Petitioner, who is an auction purchaser for the following reliefs:

“(a) this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or writ of certiorari or writ in the nature of certiorari or any appropriate writ or direction or order and to quash and set aside;

i. the order dated 20th February 2018 of the Recovery Officer, MDRT-II and 2nd May 2018 passed by the Presiding Officer, MDRT-II in Misc.Appeal No.4 of 2018 in Recovery Proceeding No.35/2008;

- ii. Confirm the sale of Ship known as MV Ocean Blessing, harboured at Tanee Bhavi Beach, Old Manglore Port, Manglore, Karnataka be confirmed in favour of the Petitioner.”

2. The Petitioner is a successful bidder in e-auction held on 28-12-2017. The Petitioner had bid for a ship known as MV Ocean Blessing, which is harboured at Taneer Bhavi Beach, Old Mangalore Port, Mangalore. It is pointed out that only one meter of the free board of the said vessel was visible over the water and hull of the said vessel was entirely embedded in sand at almost 506 meters deep. The Respondent-Bank had put this ship, which is a secured asset, to auction with no objection from the borrower. The reserved price was fixed at Rs.3.10 crores. Prior to this public auction, five public auctions were held, but no bids were received. On 19-12-2017, the Petitioner submitted his bid for Rs.3.10 crores and paid a sum of Rs.31 lakhs as earnest money. On 28-12-2017, the Petitioner who was the sole bidder improved his bid to Rs.3.11 crores, which was accepted by the Respondent-Bank. The Petitioner deposited 25% of the bid amount with the Recovery Officer. The Petitioner was given 15 days time i.e. until 11-01-2018 to deposit the balance bid amount of Rs.2,33,25,000/-, on the receipt of which the sale certificate was to be issued by the Respondent-Bank in favour of the Petitioner. On 11-01-2018, the Petitioner addressed letter to

the Respondent Bank which records that he has deposited an amount of Rs.50 lakhs towards the balance sum together with poundage of Rs.3.11 lakhs and requested 15 days more time to deposit the balance amount of Rs.1,83,25,000/- together with any penalty interest as may be mutually agreed between the Respondent-Bank and the Petitioner. On 12-01-2018, the Petitioner filed an Application before the Recovery Officer,DRT-II seeking extension of time to pay the balance amount of bid i.e. Rs.1,83,25,000/- with penalty interest acceptable to both the parties. On 25-01-2018, the Petitioner paid the balance amount of bid to the Respondent-Bank by RTGS and cheques. The Respondent-Bank filed an Affidavit dated 9-02-2018 in support of the Petitioner's Application for extension of time confirming that the Petitioner has paid the entire bid amount i.e. Rs.3.11 crores and that the sale should be confirmed in favour of the Petitioner.

3. The Recovery Officer (DRT-II), however, vide order dated 20-02-2018 dismissed the Application for extension of time relying upon section 29 of the RDDB Act, 1993 read with Rules 57 and 58 of the Income-tax Rules and directed forfeiture of the earnest money paid by the Petitioner.

4. Aggrieved by that order, the Petitioner filed Misc.Appeal No.4 of 2018 before the DRT-II. By order dated 02-05-2018 the DRT-II dismissed

the Misc.Appeal confirming the order dated 20-02-2018 of the Recovery Officer. The Petitioner has filed an Appeal before the DRAT challenging the order dated 02-05-2018 of the DRT-II. The Respondent-Bank has also filed an Appeal before the DRAT impugning the order dated 25-02-2018 of DRT-II seeking confirmation of the sale. Learned Counsel for the Petitioner submitted that in view of the monsoon, which is approaching, the vessel may further deteriorate and it may not be possible to salvage the vessel and there was urgency in the matter. He has pointed out that the DRAT is presently not functioning in view of a fire that broke out in the building where the DRAT is housed.

5. We have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent-Bank. The Respondent-Bank has supported the case of the Petitioner. The learned Counsel for the Petitioner has pointed out that there was delay of 15 days in payment of amount, inasmuch as on 8-01-2018 in the communal riots that broke out in Mangalore, his cousin was stabbed and lost his life. It is submitted that in these circumstances, there was 15 days delay in paying the balance amount.

6. We have perused the orders of the Recovery Officer and DRT-II which have inter alia held that there was no power to extend the time for

payment. Regard being had to the peculiar facts and circumstances of the case and more particularly (i) since the vessel in question may further deteriorate in view of the monsoon which has now set in and it may not be possible to salvage the vessel, (ii) that the borrower has also granted no objection for sale of the vessel, (iii) that the Respondent-Bank also supports the case of the Petitioner and has also filed an Appeal before the DRAT, (iv) the vessel in question was prior to the present auction put up for auction atleast on five occasions, but no bids were received and (v) DRAT is not presently functioning, in our view it would adversely affect the interest of all concerned, if the auction sale does not fructify. Taking an overall view of the matter in our opinion the following order would meet the ends of justice:

ORDER

- (i) The auction sale of the vessel MV Ocean Blessing shall be confirmed by the Respondent-Bank in favour of the Petitioner by issuing the sale certificate and handing over possession of the vessel to the Petitioner, subject to the Petitioner paying a further sum of Rs.5 lakh to the Respondent-Bank within four days from today.
- (ii) The delay in making the balance payment of Rs.1,83,25,000/- shall stand condoned.
- (iii) The impugned orders of the Recovery Officer dated 20-02-2018 and the DRT-II dated 02-05-2018 are set aside.

7. We record the statement of the learned Counsel for the Petitioner that the Petitioner shall pay a sum of Rs.2.5 lakhs to Tata Memorial Cancer Hospital, Mumbai within one week from today.
8. We record the statement of the learned Counsel for the Petitioner and the learned Counsel for the Respondent Bank that the Appeals before the DRAT shall be withdrawn at the earliest.
9. The Petition to stand disposed of in the aforesaid terms.
10. We make it clear that this order is passed in the peculiar facts of the case and shall not be treated as a precedent.
11. List for reporting compliance on 25 June 2018.

(V.L.ACHLIYA,J.)

(A.A.SAYED, J.)