THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION NO.35293 OF 2017

O R D E R
(*per* Justice Sanjay Kumar)

The petitioner assails the proceedings dated 17.10.2017 of the State Bank of India, whereby she was informed that as she had failed to pay the balance of the 25% of the bid submitted by her on 13.10.2017, her request for issuing a sale confirmation certificate could not be considered and that the earnest money deposit (EMD) amounts paid by her stood forfeited. The petitioner also seeks a direction to the bank to confirm the sale in her favour.

Heard Sri O.Manohar Reddy, learned counsel for the petitioner, and Sri Maruthi Jadhav, learned counsel representing Sri B.S.Prasad, learned counsel for the State Bank of India.

The facts, to the extent relevant, are as follows: The State Bank of India issued e-auction sale notification dated 01.09.2017 proposing to sell the assets, mortgaged by M/s.Meena Jewellers Exclusive Private Limited and its sister concerns, for recovery of its secured debts. The sale notification was published in the newspapers on 03.09.2017. As regards the secured open plots of land bearing Nos.118 (604 square yards), 122 (721 square yards), 123 (774 square yards) and 124 (827 square yards) situated in Survey No.1103, Medchal, Ranga Reddy District, with which we are presently concerned, the auction sale was scheduled to be held on 12.10.2017. Therein, the petitioner emerged as the highest bidder for these plots, but as the auction went on upto 6.00 PM on 12.10.2017, the bank informed her by four individual letters dated 13.10.2017 that she was the successful bidder for the four plots in question and that as she had deposited the EMD amount for each of them, the remaining amounts mentioned in the letters had to be deposited by that day so as to obtain sale confirmation. The details of the account into which the amounts were to be transmitted were mentioned in each of the letters.

Admittedly, the petitioner failed to deposit the amounts due in the named bank account on the said day. According to her, on receipt of the letters dated 13.10.2017, she deposited the requisite amount in her account in ICICI bank but due to 'technical reasons and unavoidable circumstances', the amount could not be transferred to the named account in the State Bank of India. She claimed that she immediately contacted one Ajay Kumar, the Branch Manager of the State Bank of India, by phone and requested him to accept a cash deposit, duly explaining the technical problems faced by her. Thereafter, due to the intervening holidays on Saturday and Sunday, she transferred the amount on 16.10.2017. She then made a representation to the State Bank of India on 17.10.2017 not to treat her as a defaulter due to the above stated circumstances and to issue a sale confirmation certificate to her on humanitarian grounds and in the interest of justice. The said representation was received by the bank on 17.10.2017 at 5.00 PM but her request was denied under the impugned letter of the same date.

Sri O.Manohar Reddy, learned counsel, would contend that there was no actual failure on the part of the petitioner as she was in a position to make a cash deposit on 13.10.2017 but the bank was not willing to permit such deposit and she could not be declared to be in default of the statutory mandate of the relevant rules. He would further state that during the pendency of this writ petition, the four plots in question were again brought to sale and were sold at a consideration less than that offered by the petitioner by Rs.1,00,000/-. He would assert that the action of the bank was not in its own interest and that, by adopting a purely hyper technical stand, the bank not only sold the plots at a lesser price but also did great injustice to his client as the EMD amounts deposited by her, aggregating to Rs.2,90,000/-, stood forfeited.

Per contra, Sri Maruthi Jadhav, learned counsel, would point out that the bank informed the petitioner, *vide* the letters dated 13.10.2017, of the account details so as to enable her to pay the amount due by way of demand draft/NEFT/EFT/RTGS but not in cash. He would further state that the petitioner contacted the authorised officer to find out as to whether she could bring cash to make the deposit only after closure of the banking hours on 13.10.2017 and that she could not therefore take advantage of her alleged offer to do so. He would also point out that though the petitioner claimed that due to technical reasons, the transfer of the amount could not be made online from her account in ICICI bank, no letter had been produced from that bank in proof of this claim. Relying on the additional counter-affidavit filed by the bank, the learned counsel would point out that the amounts deposited by the petitioner on 16.10.2017 were refunded to her on 21.10.2017 and she did not raise any objection at that point of time. He would assert that it was only because the bank refused to return the EMD amounts deposited by her that she filed this writ petition on 23.10.2017, without even disclosing the fact that the bank had already refunded the other amounts deposited by her. He would conclude by submitting that as the petitioner was already refunded the said deposited amounts, the question of confirming the sale in her favour did not arise and as the endeavour of the petitioner was only to get back her EMD amounts but she asked for confirmation of the sale, the writ petition was an abuse of process and was liable to be dismissed with exemplary costs.

Significantly, in her reply affidavit, the petitioner did not deny the bank's claim that she had called the manager on phone only after closure of its business hours on 13.10.2017. She however stated therein that no intimation was given to her that amounts had been deposited in her account on 21.10.2017 and that, in any event, non-mention of the refund of the said amounts was not relevant for the purpose of this case.

At the outset, it may be noted that the prayer of the petitioner is not for refund of the EMD amounts that stood forfeited. She only asked for confirmation of the sale in her favour though she assailed the proceedings dated 17.10.2017, whereby the bank not only informed her that her request for issuing sale confirmation could not be considered but also the factum of forfeiture of the EMD amounts paid by her.

In any event, her entitlement to seek either confirmation of the sale in her favour or refund of her forfeited EMD amounts can be considered only in the context of Rule 9 of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') framed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). Rule 9(3) is relevant for this purpose and reads as under:

‘**9. Time of sale, Issue of sale certificate and delivery of possession, etc :--**

(1) ……….

(2) ……….

(3) On every sale of immovable property, the purchaser shall immediately, i.e., on the same day or not later than next working day, as the case may be, pay a deposit of twenty five percent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.’

The clear mandate of the aforestated provision puts it beyond doubt that the auction purchaser must deposit 25% of the sale price on the same day or not later than the next working day, as the case may be. The rule further mandates that in the event the purchaser does not do so, the property shall be sold again. No discretion is left with the bank in terms of the aforestated mandatory provision to extend the time for deposit of 25% of the sale consideration beyond the next working day after the date of the sale.

In the present case, the sale was held on 12.10.2017 but as it went on till late in the evening, the petitioner could not have made the payment in terms of Rule 9(3) on the same day. That is the reason why the bank issued letters dated 13.10.2017 calling upon her to make the said deposit on that day, duly furnishing the details of the account into which the payment had to be made. The petitioner failed to do so. In the light of the uncompromising tone and tenor of the rule and the categorical mandate thereof, the bank could not have accepted the deposit made by the petitioner on 16.10.2017.

Though Sri O.Manohar Reddy, learned counsel, would place reliance on ***ROSALI V. V/s. TAICO BANK***[1] in the context of interpretation of the word 'immediately', we are of the opinion that the general interpretation given to this term would be of no avail to the petitioner while considering the mandate of Rule 9(3) of the Rules of 2002, as the said provision does not merely stop at the use of the word 'immediately' but goes on to indicate that this word should mean 'on the same day or not later than the next working day, as the case may be.' This decision therefore does not further the case of the petitioner.

It is not even the case of the petitioner that she took the cash available with her and went to the State Bank of India on 13.10.2017 to make the deposit. She admits so in her reply affidavit. The claim of the bank that she only called the manager on that day after closure of the banking hours remains unrebutted. No benefit of doubt can therefore be extended to her in this regard.

As rightly pointed out by Sri Maruthi Jadhav, learned counsel, there is no evidence of the ICICI bank having reported any technical difficulties in transferring the amount online. Therefore, as matters stand, be it for whatever reason, the petitioner failed to satisfy the statutory mandate of Rule 9(3) of the Rules of 2002. The plea of the petitioner to treat the deposits made by her on 16.10.2017 as having been lawfully made towards the balance of the 25% of the sale consideration therefore cannot be accepted. This would not amount to valid compliance with the rule. She cannot therefore seek confirmation of the sale in her favour based thereon.

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[1] (2009) 17 SCC 690

As regards forfeiture of the EMD amounts deposited by the petitioner, individual declarations submitted by her on 09.10.2017 in relation to each of the plots in question contained an unequivocal statement to the effect that in the event she failed to comply with the terms and conditions of the sale or was not able to complete the transaction within the time limit specified, for any reason whatsoever, the EMD and any other monies paid by her along with the bid and thereafter were liable to be forfeited by the authorised officer. Despite the fact that it obtained such an undertaking, the State Bank of India only forfeited the EMD amounts deposited by the petitioner and refunded the balance amounts deposited by her on 16.10.2017 towards 25% of the sale consideration. Having accepted this condition imposed by the bank willingly and having offered her declaration stating as *supra*, it is not open to the petitioner to now claim that forfeiture of her EMD amounts is unlawful. Therefore, this plea of the petitioner also cannot be countenanced.

On the above analysis, this Court finds that the petitioner has not made out any grounds for interference. The writ petition therefore fails and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

19th JANUARY, 2018

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