IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4505 of 2017(O&M)

Date of decision: 25.10.2018

Sanjeev Kumar …..Appellant

VERSUS

Punjab National Bank .....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rose Gupta, Advocate for the appellant.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit for declaration to assail action of bank contained in letter dated 27.03.2009 whereby amount of Rs.5.12 lakhs deposited by the appellant/plaintiff has been forfeited by the Bank and for recovery of Rs.5.12 lakhs along with interest was dismissed by the trial Court vide judgment and decree dated 16.05.2012. The plaintiff remained unsuccessful before the first Appellate Court in view of decision dated 06.03.2017 by the Additional District Judge, Hisar.

Indisputably, on 12.12.2008, the respondent issued tender notice in newspaper dated 14.12.2008 for sale of ground and second floor of building measuring 355 square yards situated opposite PLA Market, Delhi Road, Hisar owned by Gulshan Singla etc. The appellant submitted tender to the Bank and deposited Rs.5.12 lakhs towards earnest money. The tenders were opened on 15.01.2009 and the appellant being the highest bidder came out to be successful for purchase of second floor of the property. As per terms and conditions of tender notice, plaintiff was liable to deposit a total sum of 25% amount of bid money after adjusting the earnest money within a period of 30 days from the date of acceptance of offer. It is argued that the appellant/plaintiff purchased pay order No.022825 dated 16.01.2009 of HDFC Bank for balance 15% of bid amount, sufficient to show that he was possessed of funds to discharge his liability qua 25% of the bid price within the stipulated period. It is argued that the appellant wrote a letter to the Bank marked as Ex.P20 whereby he requested the Bank to assure him that he will be given physical vacant possession of the subject premises as and when sale deed is executed in his favour. He also made a request for extension of time for depositing 15% of bid amount. It is vehemently argued that as the respondent-Bank did not offer to deliver physical possession of second floor of the property in question, the appellant did not deposit the remaining 15% of bid money, therefore, the respondent is not entitle to forfeit 10% of bid money deposited by the appellant at initial stage.

Another submission made by counsel is that as dispute between Bank and loanee i.e. M/s Singla Sons has been settled, no loss has been caused to the respondent-Bank even if auction conducted by the Bank for sale of property of the loanee did not fructify on account of alleged failure of the appellant to deposit bid money to the extent of 25% within a period of 30 days from the date of acceptance of offer.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned and copies of documents supplied during the course of hearing.

The tender notice for sale of immovable property dated 12.12.2008 is marked as Ex.P33. In the table giving description of property etc. column No.3 deals with date of possession as follows:-

Description of property	Name of Owner	Date of Possession	Amount Recoverable	Reserve Price
Ground & 2nd floor of immovable property + construction thereon Measuring 355 square yards opp. PLA market, Delhi Road, Hisar (Western side only) vide khasra No.4089, 4090, 4092, 4094, 4095, 4015 & vide sale deed No.1176 dated 30.04.2004	M/s Singla Sons, 79-80, Ganesh market, Hisar Partners Sh. Gulshan Kumar Singla, Smt. Sneh Lata, Sh. Vivek Singla, Sh. Abhishek Singla.	12.04.2008 (2nd floor) & 03.12.2008 (Ground floor)	Rs.12693905.75 p + interest & other charges w.e.f. 01.04.2008	Rs.10350000 /- for Ground Floor & Rs.4365000/- for 2nd floor.

However, as per terms and conditions of tender notice, the paper possession of the asset shall be delivered only on payment of full amount of tender money. Meaning thereby that there was no such condition of tender that physical possession of the premises would be delivered to the successful purchaser/bidder on payment of full amount of tender money. The terms and conditions also contain a clause that the successful bidder/purchaser shall be warned/cautioned that in case of non-payment by such a successful bidder/purchaser of the balance sale price within the time specified, the initial deposit including EMD shall stand forfeited and the property may be resold. As the appellant offered to purchase second floor of the auctioned property after going through and accepting terms and conditions of the tender notice which clearly stipulate that paper possession only of the asset shall be delivered on payment of full amount of tender money and the said offer was accepted by the Bank resulting in a concluded contract between the parties, imposing any such condition by the appellant that physical vacant possession of the subject premises shall be delivered to him as and when sale deed is executed in his favour would be nothing but his intention to back out of the terms and conditions agreed between the parties. In the given scenario, the mere fact that the appellant had purchased the pay order for balance 15% of the bid amount or he had the resources to discharge his liability to that extent, would be of no consequence to accept his contention that action of the bank forfeiting the initial deposit is either contrary to the terms and conditions agreed between the parties or against any statutory provision in law.

The second contention raised by counsel is also misconceived and liable to be rejected. As the respondent Bank has enforced the terms and conditions agreed between the parties to forfeit the initial deposit on account of the appellant having failed to pay the balance price, there was no obligation of the Bank to prove that it has actually suffered any loss because of the transaction having failed to fructify. Analyzed from any angle, I do not find an error much less perversity in consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

OCTOBER 25, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no