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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 12791/2018**

SIDHA NEELKANTH PAPER INDUSTRIES PVT LTD ..... Petitioner

Through Mr Saket Sikri, Mr Achin Mittal, Mr Abhishek Chauhan, Advocates.

versus

RESERVE BANK OF INDIA & ORS ..... Respondents

Through Mr H.S. Parihar, Mr Kuldeep S, Mr Parihar, Advocate for RBI.
Mr N.P. Gaur, Advocate for R2/Bank
Mr Johan Mathew, Advocate for R3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **28.11.2018**

CM APPL. 49659/2018

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning the execution of the assignment deed dated 30.03.2017 entered into between respondent nos. 2 and 3. The petitioner had borrowed certain funds from respondent no.2 bank. The said loan was secured by mortgage of immovable properties – (i) 170, Deepali, Pitampura, Delhi and (ii) 392, Deepali Pitampura, Delhi – owned by respondent nos. 4 and 5 respectively. Respondent nos. 4 and 5 had stood as sureties and personally guaranteed the

discharge the repayment obligation of the petitioner.

4. It is the petitioner's case that it had offered to settle the amounts due to respondent no.2 bank on various occasions during the period 2012 to 2014 but the respondent no.2 bank had not accepted its offer. Respondent no. 2 bank has not assigned its rights in favour of respondent no.3 (which is an asset reconstruction company). It is the petitioner's case that the said assignment deed is fraudulent as the petitioner had offered a higher amount for settling its dues, which was not accepted on the ground that value of the mortgaged properties was higher.

5. During the course of arguments, on a pointed query raised by the Court, it was fairly submitted by Mr Sikri, the learned counsel appearing for the petitioner that the said properties had also been put to auction on several occasions but the auction had failed. It is stated that on the last occasion one of the property was put to auction with the reserved price of ₹12.5 crores.

6. The loans advanced to the petitioner constitutes a financial asset in the hands of respondent no.2 bank and the value at which such assets should be transferred is, clearly, a commercial decision, which is required to be taken by respondent no.2 bank. Such commercial decisions do not warrant interference in proceedings under Article 226 of the Constitution of India.

7. In the present case, the respondent no.2 bank has assigned the financial asset (along with attendant security interest) to respondent no.3 for a total consideration of ₹12.5 crores. The said assignment was executed on 30.03.2017; that is, in the financial preceding year the last financial year. It is difficult for this Court to speculate as to what was the value of the financial asset on the said date. There is also no material to establish that as on 30.03.2017, the petitioner had offered an immediate ready payment in

excess of ₹12.5 crores, which was rejected in favour of assigning the loan in favour of respondent no.3.

8. In view of the fact that the respondent no.2 had made efforts to auction, this Court is not persuaded to accept that the decision of respondent to execute the assignment is perverse, capricious or arbitrary. This Court is also unable to accept that the execution of the assignment is apparently fraudulent as contended.

9. This Court is also of the view that the petitioner does not have any *locus* to challenge the assignment by the respondent no.2; respondent no.2 – like any other person owning asset – is free to deal with its assets, without objection from any third party.

10. In view of the above, the petition is dismissed. The pending application is also disposed of.

11. It is clarified that nothing stated in this order should be construed as an expression of opinion as to the value of the properties in question. It is also clarified that all contentions of the parties are reserved.

VIBHU BAKHRU, J

NOVEMBER 28, 2018

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