IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 15128 OF 2019

M/s S.S. Sarda Leasing & Finance Ltd.
& others Petitioners

Versus

The State of Maharashtra & another Respondents

Mr.D.P.Palodkar, advocate for the petitioners.
MrS.B.Narwade, AGP for Respondent No.1.

CORAM : S.V.GANGAPURWALA &
AVINASH G. GHAROTE, J J.
DATE : 17th December, 2019

PER COURT:

1 Mr.Palodkar, learned Counsel for the petitioners, submits that initially the reserve price of the writ property was fixed at Rs.4,94,00,000/- in the year 2017. Now, fresh auction is being resorted to and reserve price is reduced to Rs.1,11,00,000/-. The petitioners are seeking a direction to consider the application of the petitioners with regard to correcting the reserve price. It is contended that even the ready reckoner price is more than Rs.5,00,00,000/-.

2 The learned Counsel for the petitioners submits that the ground raised by the petitioners would not be within the purview of Section 17 of the Securitization and Reconstruction of

Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, “the SARFAESI Act”). The learned Counsel relies on the judgment of the Apex Court in the matter of **Ram Kishun and others Vs. State of Uttar Pradesh and others**, (2012) 11 SCC 511. The learned Counsel submits that the valuation of the property should be determined fairly and reasonably. The acceptance of valuation report must be based on proper application of mind. The learned Counsel also relies on the judgment of the Division Bench of this Court in the matter of **Chemical Mazdoor Sabha Vs. Industrial Development Bank of India**, 2010 (7) Mh.L.J. 161. The rule of alternate remedy is a rule of self restraint.

3 For considering the grievance of the borrowers against the action of the secured creditors under Section 13(4) of the SARFAESI Act, a special Tribunal is constituted. The grievance of the petitioners is with regard to the fixation of reserve price. Earlier, the reserve price was fixed at Rs.4,94,00,000/- and now the reserve price is reduced. It is also trite that if reserve price is fixed, the property is put to action but no bids are received so, for next auction, reserve price is reduced. The petitioners, in a way, are challenging the auction proceedings conducted under Section 13(4) of the SARFAESI Act.

In the light of that, the Debts Recovery Tribunal has got jurisdiction to consider the challenge to the auction under Section 17 of the SARFAESI Act. The Tribunal would be in a better position to appreciate the factual aspects about the valuation, repeated auction and dilate upon the disputed questions of facts, which would not be permissible in the writ jurisdiction.

4 In the light of above, writ petition is disposed of with liberty to the petitioners to avail of the alternate remedy. All contentions are kept open. No costs.

AVINASH G. GHAROTE
JUDGE

S.V.GANGAPURWALA
JUDGE

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