pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4124 OF 2018

M/s. Aman Polypack Pvt. Ltd. & Ors. .. Petitioners

Versus

Bank of India & Ors. .. Respondents

Mr. Vishal Kanade i/by Jainuddin I. Kazi for Petitioners.
Mr. O. A. Das for Respondent Nos.1 and 2.
Mr. Ashish Verma i/by Ramkumar & Vipinkumar R. Sharma for Respondent No.3.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

DECEMBER 19, 2019.

P.C.

1. The first Petitioner was the principal debtor. The other Petitioners were the guarantors. Issuing notice under Sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and passing an order under Section 13 of the SARFAESI Act, 2002, the first Respondent proceeded to take action under Section

14 of the SARFAESI Act, 2002. At that stage the Petitioners filed S.A. No. 60 of 2013 and prayed therein that further proceedings pursuant to an order obtained by the Bank under Section 14 of the SARFAESI Act, 2002 be stayed. The said S.A. was dismissed on account of non-compliance of the conditional order requiring the Petitioners to deposit the amount indicated in the order.

2. The Petitioners ought to have been vigilant under said circumstances for the reason sale of the secured asset was in their knowledge.

3. The auction took place on 25.07.2014. Only one bid was received. The same was accepted. The bidder deposited the bid amount. Possession of the secured asset was handed over to the bidder. Sale Certificate was issued and registered.

4. After 177 days of the sale, the Petitioners filed S.A. (L) No. 89 of 2015 and along there with prayed for delay in approaching the DRT to be condoned; pleading before the learned DRT that if limitation was computed from the date of the actionable knowledge to challenge the sale the application was within limitation. Actionable knowledge pleaded by the Petitioners was the date when they acquired knowledge that the

sale of the secured asset was at a price less than the reserved price indicated in the notice inviting bids.

5. Learned DRT did not condone the delay and held that the Petitioners ought to have been vigilant to acquire actionable knowledge. The said order dated 03.02.2015 has been upheld by the learned DRAT vide impugned order dated 09.08.2017.

6. The instant Writ Petition has been filed on 20.03.2018 i.e. about seven months after the impugned order was passed. Before the Writ Petition was filed, in view of the impugned order dated 09.08.2017, the Petitioners sought for and were granted an order on 29.08.2017 refunding the amount which the Petitioners had deposited. If an auction sale is questioned by the owner of the property, the requirement of law is that the amount deposited by the purchaser plus 5% thereof has to be deposited.

7. Suffice it to state if the Petitioners intended to continue with the action to challenge the auction sale, they could not have withdrawn the amount which they deposited as required by law before the Debts Recovery Tribunal. We further find inordinate delay in approaching this court.

8. We cannot lose sight of the fact that in auction sales conducted in proceedings either under SARFAESI Act, 2002 or the Recovery of Debts and Bankruptcy Act, 1993, bidders are extremely weary to participate in the auction sales for the reasons on some pretext or the other the debtors or guarantors whose properties are put to auction drag on the matter at their leisure and pleasure. Enforcement of one's rights has to be with diligence, more so, when third party rights are likely to be effected by orders which could be passed in said proceedings. Equity plays a very important role in adjudicating issues under Article 226 of the Constitution of India.

9. Thus, the Writ Petition is dismissed.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**