IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 22956 OF 2019

M/s Labdhi Arcade .. Petitioner
V/s
Marath Sahakar Bank Ltd. & Ors. .. Respondents

Mr. M. M. Vashi, Senior Counsel a/w Ms Manisha Desai i/b M. P. Vashi & Associates for the Petitioners.
K. S. Dewal i/b. J. Joshi for the Respondent No. 1.
Mr. Sidharth Samantray i/b. Vivek Phadke for the Respondent Nos. 2, 3, 5 and 6.
Jaywant Ghone, Manager, Legal City Co-op. Bank Ltd, Mumbai for the Respondent No. 7

CORAM : A. A. SAYED &
PRAKASH D. NAIK, JJ.
DATED : 16th August, 2019

P.C.:

We have heard learned Senior Counsel for the Petitioner, learned Counsel for the Respondent Bank and learned Counsel for the Respondent Nos. 2 to 6-Borrowers.

2. The Petitioner has essentially impugned the order dated 30th July, 2019 passed by D.R.T. The Petitioner is the auction purchaser of the secured asset and was declared as the successful bidder in the auction. The initial highest bid at the auction was Rs.4.05 Crores. Thereafter, by inter-se bidding by the 4 bidders, the Petitioner's offer of Rs.4,06,75,000/- was accepted and the Petitioner was declared as a highest bidder. The Petitioner paid a

sum of Rs.12.00 Lakhs as Earnest Money Deposit and handed over cheque aggregating to Rs.1,01,68,750/- to the Respondent Bank which is 25% of the bid amount offered by the Petitioner. The balance 75% amount of Rs. 3,05,06,250/- is to be paid within 30 days i.e. by 23rd August, 2019.

3. It appears that thereafter the Respondent-Borrowers filed an Affidavit indicating that they have got a buyer who is offering a sum of Rs.4.07 Crores and also gave a demand draft of Rs.25.00 Lakhs.

4. We have perused the orders dated 25th July, 2019 and 30th July, 2019 passed by the D.R.T.

5. The order dated 25th July, 2019 reads as follows:

> *"Resumed.*
>
> *Mr. Vivek Phadke, Advocate for the applicant present. Mr. Mahesh Devalekar, Advocate for the Respondent Bank present.*
>
> *Advocate for the Respondent has filed written submission on the compliance of requirement of Section 13 of the SARFAESI Act and in the sale*

exercise carried out by them. On 24.07.2019 they received bids and highest bidder has deposited 25% of the amount. The bid received was for Rs.4,06,75,000/- and against that hey have get Rs.1,68,00,750/- as initial down payment of 25%.

Advocate for the applicant has indicated to Tribunal that he will be getting a bid which is higher than this. Applicant has to file an affidavit as to bringing a buyer who will at least match the bid received by the Respondent Bank. The affidavit has to be filed on or before 30.07.2019.

Post it to 30th July, 2019 for filing affidavit.

6. The impugned order dated 30th July, 2019 reads as follows:

Resumed.

Mr. Vivek Phadke, advocate for the applicant present. Mr. Mahesh Devalekar, Advocate for the respondent bank present.

Advocate for the applicant has filed an additional affidavit indicating that he has got buyer who is offering Rs.4.07 Crores for the same property for *which the Respondent Bank has obtained another offer who was offering Rs.4,06,75,000/- and he as also given demand dart for Rs.25 Lakhs to show the bonafides. As per respondent bank the timeline for the successful bidder to make final payment and complete the deal is 23.08.2019. As such Tribunal is expecting the prospective buyer [brought by the applicant] to make payment of at least Rs.3.00 Crs before 23.08.2019 and also indicate the payment of balance amount.*

To ascertain the real position of payment by the party brought by applicant, posting the matter for 20.08.2019. If by 20.08.2019, the payment from intended party brought by applicant not come, respondent bank will be allowed to proceed with the confirmation of sale.

Post it to 20th August, 2019.

The payments being made by the parties brought by the applicant shall be kept in separate account till the decision on the officer is completed."

7. The matter is now posted before the DRT on 20th August, 2019. After having heard learned Counsel for the parties and after perusing the orders of DRT, we find that the Respondent-Borrowers are seeking to introduce a purchaser after the entire auction process has been conducted and concluded. In our prima facie view, the approach the D.R.T. is not proper. There is some sanctity attached to the auction process which has already been conducted and concluded. Merely because a 3rd party is brought by the Respondent-Borrowers, who has offered Rs.25,000/- more, would not mean that such proposal should be entertained by DRT.

8. Be that as it may be, inasmuch as, the new purchaser according to the Respondent-Borrowers had offered the amount of Rs.4.07 Crores, as against the the bid of Rs.4,06,75,000/- of the Petitioner, the learned Senior Counsel for the Petitioner fairly stated that the Petitioner is even willing to pay the said amount of Rs.4.07 Crores (instead of Rs.4,06,75,000/-) by 23rd August, 2019. We accept the statement and expect the Petitioner to pay the said amount to the Respondent bank by 23rd August, 2019.

9. Inasmuch as the matter is to appear before the D.R.T. on 20th August, 2019, though we are not interfering with the impugned

order, we deem it appropriate to the direct the Respondent-Borrowers to amend the S.A. No. 158 of 2019 and interlocutory applications, if any, by adding the Petitioner as party Respondent. Let that be done on 19th August, 2019.

10. The D.R.T. to pass the appropriate orders on 20th August, 2019 after hearing the Petitioner and after considering various judgments including that of the Apex Court, which inter alia hold that merely because a 3rd party is willing to offer more amount than the successful bidder, the auction process ought not to be disturbed, else the sanctity of the auction process would be lost and the process of auction shall be endless and it would be against public policy and public interest if concluded auction proceedings are re-opened.

11. Subject to the above directions and observations, the Petition is disposed of. All contentions are kept open. Authenticated copy of this order be issued to the parties.

(PRAKASH D. NAIK,J.) **(A.A.SAYED, J.)**