IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5663/2018

Maya S. Kambale
..VS..
SBI

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders

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Shri D.V. Siras, Advocate for the petitioner
Shri M.Anilkumar Shankarlal, Advocate for the respondent

CORAM : Z.A.HAQ & PUSHPA V. GANEDIWALA, JJ.
DATED : 19/09/2019

Heard.

By this petition, the petitioner has challenged the demand notice issued by the respondent – Bank calling upon the petitioner to pay the amount payable by her. The e-auction sale notice dated 18/07/2018 is also challenged in this petition. This petition was filed on 29/08/2018 and came up before the Court for consideration on 04/09/2018, on which date the Court directed issuance of notice to the respondent subject to depositing the amount of Rs. 9,00,000/- by the petitioner till 06/09/2018. As per the order dated 04/09/2018, the petitioner deposited the amount of Rs. 9,00,000/- by demand draft dated 05/09/2018.

The learned advocate for the respondent – Bank has pointed out that auction was conducted on 23/08/2018 and sale certificate is issued on 30/08/2018 i.e. much before the petitioner deposited the amount of Rs. 9,00,000/- with the registry of this Court. Relying on the provisions of Section

13 (8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Act of 2002”), it is submitted that the petitioner cannot stake any claim / right on the basis of deposit of the amount by her with the registry of this Court. It is further submitted that the auction purchaser is not impleaded as respondent in this petition.

The petitioner has filed C.A.W. No. 2168/2019 seeking permission to amend the petition to bring on record the subsequent events and to implead the auction purchaser as respondent in the petition. By the proposed amendment, the petitioner is also seeking to challenge Section 13 (8) (ii) of the Act of 2002.

The learned advocate for the respondent has argued that if vires of Section 13 (8) (ii) of the Act of 2002 is to be challenged, the petitioner will have to implead Union of India as respondent which is not done.

In the above facts, we are of the view that the following order would sub-serve the ends of justice:-

The writ petition, as it stands is **disposed** with liberty to the petitioner to file fresh petition, if so advised. C.A.W. No. 2168/2019 is also disposed.

The amount of Rs. 9,00,000/- deposited by the petitioner with the registry of this Court alongwith interest on it, if any, be given back to the petitioner.

It is submitted on behalf of the respondent – Bank that possession of the property in question is handed over to the auction purchaser.

Though the learned advocate for the petitioner disputes this fact, we are not inclined to restrain the respondent – Bank from handing over possession of the suit property to the auction purchaser, if already it is not handed over. However, the auction purchaser – Anand Kishanchand Asudani is restrained from creating any third party right, title and interest in the property in question for one month from today. We are conscious that the auction purchaser is not party in this petition and this order is passed at his back, however, the petitioner has already moved C.A.W. No. 2168/2019 seeking permission to implead the auction purchaser as respondent. For the reasons recorded above, we have not considered the civil application and instead granted liberty to the petitioner to file fresh petition, if so advised. Hence, the restraint order is passed against the auction purchaser at his back in these peculiar facts.

JUDGE JUDGE

Ansari