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

Writ Petition No.7303 of 2017
Shashank Gopalkrishna Agrawal and another
Versus
Bank of India, through its Authorized Officer, Nagpur, and others.

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

Shri A.M. Ghare, Advocate for Petitioners.
Shri S.M. Bhangde, Advocate for Respondent No.1.
Shri Atul Pande, Advocate for Respondent Nos.2 to 5.

Coram : R.K. Deshpande & Vinay Joshi, JJ.
Dated : 22nd January, 2019

1. Under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"), the auction of the property mortgaged was conducted on 12-9-2017, in which the petitioners were found to be the highest bidders for an amount of Rs.1,65,47,000/-. On the same day, the petitioners deposited 25% of the amount, to the tune of Rs.41,37,200/-. As per the conditions of the auction notice, the bidder was required to deposit the balance amount within a period of fifteen days. The period of fifteen days expired on 27-9-2017, but the balance amount was not deposited in the account of the respondent No.1-Bank of India.

2. The contention of Shri Ghare, the learned counsel appearing for the petitioners, is that from 16-9-2017 itself, the petitioners have been insisting upon the Bank of India to take vacant possession of the property auctioned so that they can satisfy the Union Bank of India in respect of the condition that the disbursement of loan obtained by the petitioners shall be made upon vacant physical possession of the Bank of India (Creditor Bank). It is urged by him that the borrower thereafter approached the Debts Recovery Tribunal on 7-11-2017 and the status quo order was passed in the said proceedings. Resultantly, the petitioners have no opportunity to deposit the balance amount of consideration. It is also urged that the balance amount was required to be deposited only after the confirmation of sale and not prior to that.

3. The prayer made in this petition is in respect of taking of physical possession by the Creditor Bank, the respondent No.1 herein, in exercise of the power conferred under Section 14 of the SARFAESI Act. We are not concerned with the legality, propriety and justification in respect of the forfeiture of the deposit of Rs.41,37,200/- by the respondent No.1- Bank of India. In fact, we do not find any such communication or order forfeiting the amount of 25% deposited by the petitioners. Therefore, there is no occasion for us to comment upon it.

4. In the light of the aforesaid factual aspects, we do not find any reason to interfere in this petition. The petition is dismissed. Needless to say that it shall be open for the petitioners to agitate the legality, propriety and justification of the forfeiture of the amount by approaching the appropriate forum.

(Vinay Joshi, J.) (R.K. Deshpande, J.)

Lanjewar