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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8890 of 2018

Date of Decision : 14.05.2019

Allahabad Bank

..... Petitioner

Versus

M/s RSDR Builders Private Limited

..... Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Anupam Gupta, Senior Advocate assisted by
Mr. R. S. Manhas, Advocate and
Mr. Ashok Kumar, Advocate
for the petitioner.

Mr. Vikas Bahl, Senior Advocate assisted by
Ms. Priyanka Kansal, Advocate
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

The matter is taken up for hearing.

2. At the outset, Ld. Counsel for the respondent-plaintiff draws attention of the Court to the decision of Debts Recovery Appellate Tribunal, Delhi in Misc. Appeal No.419 of 2018 (Annexure P-21) wherein it was observed *inter alia* “*In view of the forgoing, I allow this appeal and set aside the impugned order of the DRT. Consequently, the appellant will now become entitled to proceed with the confirmation of auction sale already conducted by it. It is, however, needless to state that since the S.A. is still pending and in case respondent succeeds in its case finally on merits, the sale which already stands conducted has to be subject to the*

success or failure of the security applicant, respondent herein, in its S.A.

However, in the confirmation letter which now appellant will be entitled to issue to the successful auction purchaser, it will be mentioned that confirmation of sale is subject to the final decision which might be taken in the respondent's pending S.A.” (emphasis added)

3. In this connection, submission of Ld. Counsel for the respondent is that while the alleged 'fraud' on the part of the petitioner-Bank in having suppressed about the pendency of the Civil Litigation at the instance of Vashistha Kumar Goyal, in which an interim order was passed on 07.08.2018, can be established conclusively after trial, still his client does not intend to take any chance regarding the ultimate outcome of the pending S.A. preferred at the instance of the Guarantors M/s Maha Maya Exports Private Limited and Vashistha Kumar Goyal, as he, being an third party purchaser, is not inclined to face the perils of any unexpected results of litigation pending between the other parties. He, therefore, submits, on instructions from the Director-Sh. Rajesh Gupta, that the respondent would be satisfied and would also be willing to withdraw his Civil Suit forthwith, if the Bank Authorities simply return the amount deposited by the respondent, with them, since he is not willing to wait for decision of the S.A. pending between the other parties.

4. On the face of it, the submission would appear to be balanced and fair, even assuming that the Ld. Court below lacked in jurisdiction to entertain the suit in view of the Bar of Section 34 of the SARFAESI Act, although undoubtedly, the applicability of the ground of 'fraud' by way of concealment of a vital fact regarding pendency of litigation concerning the

property sold would be of material consequence.

5. At this juncture, therefore, on balancing all the equities involved, the submission made on behalf of the respondent clearly appears to be justified. The present revision petition is, therefore, disposed off by setting aside the impugned order, but with a direction upon the petitioner-Bank to refund the earnest money/total payment made by the respondent to the tune of Rs.11,60,25,000/- deposited with it by the respondent, without paying any interest, latest by 30.06.2019.

(SUDIP AHLUWALIA)
JUDGE

May 14, 2019

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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No