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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 672/2019 and CM APPL. 46115/2019

GULJHARI LAL & ANR ..... Appellants
Through: Mr. Shikhar Khare and Mr. Srinivasan Ramaswamy, Advocates

versus

ALLAHABAD BANK ..... Respondent
Through: Ms. Arti Singh, Mr. Aakashdeep Singh Roda and Ms. Pooja Singh, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% **28.11.2019**

1. The appellants/petitioners are aggrieved by the judgment dated 25.09.2019, passed by the learned Single Judge, dismissing a writ petition filed by them praying *inter alia* for setting aside the order dated 05.06.2017, issued by the respondent/Bank, whereby they were informed that the competent authority had decided to cancel the sale in respect of the basement and ground floor of a property situated on Plot No.28, Block A-1, WHS, Kirti Nagar, New Delhi, measuring 900 sq. ft., in their favour on technical grounds upon receipt of a complaint from one of the bidders.

2. By the impugned order, the learned Single Judge has declined to grant any relief to the appellants/petitioners and dismissed the writ petition with directions issued to the respondent/Bank to return the EMD and 25% of the bid amount to them alongwith simple interest @ 4% per annum from 05.05.2012. Aggrieved by the said order, the present appeal has been filed.

3. We may briefly allude to the relevant facts of the case. On 21.04.2017, the respondent/Bank had issued a public notice of sale in respect of the subject property. Evincing interest in participating in the bid, the appellants/petitioners had deposited the EMD for a sum of Rs.10,26,000/- with the respondent/Bank on 09.05.2017. As per the Notice of sale, an e-auction was conducted by the respondent/Bank on 12.05.2017 through the e-auction platform, www.bankeauctions.com. The last bid made by the appellants was at 11:53:33 AM, for a sum of Rs.1,25,10,000/-. On the conclusion of the e-auction, the appellants had emerged as the highest bidders. The Notice of sale required the respondent/Bank to issue a letter declaring the appellants as successful bidders on the very next day, but on not receiving any such intimation, the appellants visited the Zonal Office of the Bank to make enquiries and were given to understand that they were the highest bidders and were called upon to deposit 25% of the bid amount towards part payment of the sale consideration. On 19.05.2017, the appellants deposited a sum of Rs.21,05,000/- with the respondent/Bank towards 25% of the bid amount. Thus, a total sum of Rs.31,31,000/- was deposited by the appellants with the respondent/Bank.

4. In the meantime, on 15.05.2017, the respondent/Bank received a complaint from one of the bidders, Shri Naresh Pareek, alleging *inter alia* that due to loss of connectivity, he was unable to effectively bid in the e-auction conducted on 12.05.2017. Para 11 of the impugned order has captured the relevant para of the complaint dated 15.5.2017, made by Shri Naresh Pateek, wherein he had stated that there was a loss of connectivity of

the internet in the premises of the respondent/Bank and he had stopped lodging bids since the officers and technicians of the e-auction service provider of the respondent/Bank had informed him that he could submit his bid till 1 PM. When the complainant went to his office situated at Mansarovar Garden and tried to log in, to participate in the e-auction, by submitting a further bid at 12:20 PM, he found that he could not log in. This was followed by several telephonic calls made by the complainant to the respondent/Bank and the Bank officers but by then, the time fixed for conducting the e-auction had lapsed.

5. It was submitted by the respondent/Bank that on receiving the complaint dated 15.05.2017, the Bank had decided to issue the impugned cancellation of sale letter dated 05.06.2017 and intimated the appellants that the next sale for the subject property would be published in due course. Aggrieved by the said decision, the appellants filed a writ petition, which has been dismissed by the impugned judgment.

6. The reasons that had weighed with the learned Single Judge for declining any relief to the appellants includes a consideration of the stipulation contained in Clause 20 of the Notice of sale, extracted hereinbelow:-

> *"20. **The Authorized Officer has the absolute right to accept or reject any bid or adjourn/postpone/ cancel the sale without assigning any reason therefore.** Further, the last date of submission of EMD may also be adjourned/postponed to next working day in case of the existing date of submission of EMD is declared as holiday. It may be noted that nothing in this notice constitute or deemed to constitute any commitment or representation on the part of the bank to sell the property."*
> (emphasis added)

7. As can be seen from a perusal of Clause 20 above, the respondent/Bank had reserved to itself, an absolute right to accept or reject any bid without assigning any reason for the same and further, it had reserved its right to adjourn/postpone or cancel the sale without assigning any reasons for the same. Thus, the respondent/Bank was entitled to cancel the sale even after accepting the highest bid.

8. The learned Single Judge also noticed the submission of the counsel for the respondent/Bank that as on the date of passing the impugned order, a sum of Rs.59,24,374/- was due and payable by the borrower and upon a valuation conducted in respect of the subject property, they had discovered that the same could fetch a realisable value of Rs.1,81,80,000/-, as its fair market value was assessed at Rs.2,27,25,000/-. The valuation report dated 28.08.2019, produced by the respondent/Bank from a valuer appointed on its panel mentioned that the distress value of the subject property was Rs.1,59,07,500/-.

9. Observing that due to passage of two years reckoned from the date when the auction was cancelled, on 05.06.2017, there would naturally be an amount of variation in the price of the subject property, the learned Single Judge went on to express an opinion that the exercise of the power of cancellation by the respondent/Bank cannot be said to be unreasonable, arbitrary and without due process, more so, when Clause 20 empowers the Bank to do so. The Court was also of the opinion that the respondent/Bank was well entitled to get the best price for the subject premises and therefore

it was only right that it should be allowed to conduct a re-auction to fetch a higher price, thereby lessening the liability of the borrower.

10. Learned counsel for the respondent/Bank particularly draws our attention to the order dated 09.01.2018, passed in the writ proceedings, copy whereof has been filed as Annexure A-11 to the appeal to state that during the pendency of the writ petition, she had duly conveyed an offer made by the Bank that it was willing to withdraw the cancellation letter dated 05.06.2017 issued to the appellants, on their paying the balance amount. In response, counsel for the appellants had sought time to obtain instructions from his clients and at his request, the matter was adjourned to 01.03.2018. However, the appellants did not come up with the balance amount and as a result, the writ petition was dismissed on merits.

11. We are of the opinion that the writ petition filed by the appellants has been rightly dismissed. There is no good reason for this Court to interfere with the impugned judgment in the given facts and circumstances. Besides the fact that the respondent/Bank was well empowered to exercise its discretion under Clause 20 of the Notice of sale, as noted above, during the pendency of the writ petition, an opportunity was duly afforded to the appellants to pay the balance sale consideration for the respondent/Bank to declare them as successful bidders and proceed to execute the sale documents in respect of the subject property, in their favour. Having regard to the fact that ample opportunity was given by the respondent/Bank to the appellants to pay the balance sale consideration for the Bank to withdraw the cancellation letter, which for reasons best known to them, the appellants did not avail of, it cannot be urged now that they have been

illegally deprived of a valuable opportunity to acquire the subject property, being the highest bidders.

12. As a result, the present appeal is dismissed in *limine* as meritless alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 28, 2019
rkb/ap/na