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

\+ **Date of Decision: 8.07.2019**

% **W.P.(C.) No. 7174/2019**

SH. BHARAT BHUSHAN SHARMA ..... Petitioner

Through: Mr. Pranesh, Advocate.

Versus

ALLAHABAD BANK & ORS. .....Respondents

Through: Mr. Rajesh Kumar Gautam, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CM No.29856-57/2019

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

W.P.(C.) No. 7174/2019 & CM No.29855/2019

1. The petitioner has preferred the present writ petition to assail the order dated 19.3.2019 passed by the Debt Recovery Appellate Tribunal in Appeal No. 397/2017, arising out of the S.A.No. 64/2017 (DRT-II, Delhi). The petitioner was the successful bidder in the auction held at the behest of the respondent-Allahabad Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (also known as the SARFAESI Act). The petitioner gave the highest bid of

Rs.26.10 lacs in respect of the auctioned property. He paid 25% of the bid amount within the period prescribed as per the sale proclamation. The petitioner was called upon by the respondent-bank vide letter dated 14.3.2017 to deposit the balance 75% of the bid amount on or before 29.3.2017. Admittedly, prior to the said deposit being made, the borrower approached the respondent-bank and offered to pay Rs.43 lacs, as against the bid amount of Rs.26.10 lacs offered by the petitioner-auction purchaser. The respondent-bank accepted the said offer made by the borrower, and consequently, the bid of the petitioner was cancelled.

2. The petitioner assailed the said cancellation before the DRT which, vide order dated 16.8.2017 accepted the said application of the petitioner, and held that the petitioner's bid could not be cancelled. Consequently, the respondent-bank appealed to the learned DRAT in appeal, which has allowed the said appeal by the impugned order.

3. The submission of learned counsel for the petitioner is that by virtue of Section 13(8) of the SARFAESI Act read with Rule 9 of the Security Interest (Enforcement) Rules, 2002, the respondent-borrower had no right to redeem the secured asset and, thus, the respondent-bank also had no right to accept the offer made by the borrower to the prejudice and detriment of the auction purchaser i.e the petitioner. In support of his submission, he places reliance on a decision of the Andhra High Court in ***Sri Sai Annadhatha Polymers and Anr. Vs. The Canara Bank*** in W.P.(C) 8155/2018 decided on 27.6.2018.

4. We have heard the submissions of the learned counsel and perused the impugned order as well as the provisions relied upon by the learned counsel and the decision of Andhra High Court in ***Sai Annadhatha Polymers (supra).*** Section 13(8) of the SARFAESI Act reads as follows:-

> *"13(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-*
>
> *(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and*
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> *(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."*

5. Rule 9 of the Security Interest (Enforcement) Rules, 2002 reads as follows:-

> *"Rule 9.* ***Time of sale, issues of sale certificate and delivery of possession, etc.***—
>
> *(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.*
>
> *Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.*
>
> *(2)* ***The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:***

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9: Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent. of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if the thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not." (emphasis supplied)

6. We do not agree with the interpretation sought to be advanced by learned counsel for the petitioner to Section 13(8) of the SARFAESI Act. A perusal of the said section would show that the said section merely puts an embargo on the secured creditor against transferring the secured asset by way of lease or assignment or sale, if the conditions stated therein are met. The said section does not take away the right of the secured creditors to accept, from the borrower, an amount in excess of the amount that may have been offered as the highest bid in the auction process which, even as per the terms of the auction notice, could be rejected or cancelled. Rule 9 relied upon by the learned counsel, and particularly Clause 4 thereof, only seeks to stipulate the time period within which the auction purchaser is obliged to make payment of the balance consideration. It nowhere seeks to take away the right of the secured creditor to accept higher offer that the borrower may make so as to save its property from changing hands. Clause 20 of the notice of the sale issued by the Respondent Bank reads as follows:-

> "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 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 committee or representation on the part of the bank to sell the property."

7. Thus, the authorized officer of the secured creditor had the absolute right to accept or reject any bid or cancel the sale. In the present case, the said cancellation has taken place for very good reasons. The secured

creditor is entitled, and is rather obliged to sell the asset at the best price lest it faces the charge from the borrower, that the property has been sold for a song. In the present case, the bid offered by the petitioner was 26.10 lacs and opposed to that the borrower offered to pay an amount of Rs.43 lacs to redeem the secured asset. Pertinently, even while issuing the communication dated 14.3.2017 demanding the balance 75% amount from the petitioner, the respondent-bank reserved to itself the right to cancel the sale at his discretion in terms of Clause 20 of the Sale Notice dated 20.2.2017. Even the cancellation notice dated 27.3.2017 relied upon Clause 20 of the terms and conditions contained in the sale notice extracted hereinabove.

8. With due respect, we cannot agree with the view taken by the Andhra High Court in the case of ***Sai Annadhatha Polymers (supra).*** The said interpretation, in our view, is not borne out from a plain reading of the Section and the Rule aforesaid. This interpretation seeks to limit the right, and the discretion vested in the secured creditor, to maximize the return from the secured asset, which, as aforesaid, it is obliged to ensure.

9. For the aforesaid reasons, we find absolutely no merit in this petition. Dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 08, 2019/ib/jitender