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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 845 of 2020

1. Vinay Kumar Jain, S/o Shri Kasturchand Jain, Aged About 35 Years, R/o House No. 4, Tirupati Apartments, Tagore Nagar, Near Pachpedinaka, Raipur - 492009, Chhattisgarh

---- Petitioner

Versus

1. Corporation Bank Through Its Branch Manager, Main Branch, Raipur, District : Raipur, Chhattisgarh

-----Respondent

For Petitioner	:	Mr. Vinay K. Jain, Advocate
For Respondent	:	Mr. B. Gopa Kumar, Asst. S.G along with Mr. Himanshu Pandey, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21.08.2020

1. The challenge in the present writ petition is the inaction on the part of the respondent-bank in not refunding the amount of Rs. 35,88,250/- paid by the petitioner to the respondent-bank being the highest successful bidder of the land and the building of Plot No. B-76, area measuring 3000 Sq. ft. situated at 105, Wall Fort City, Shyama Prasad Mukherjee, Ward No. 63, Bhatgaon, Raipur Chhattisgarh.

2. The brief facts relevant for the disposal of the writ petition is that the Respondent-Bank had conducted an e-auction, publication on 12.12.2017 under the provisions of SARFAESI Act, 2002. The publication was made in the daily newspaper having wide circulation in the area. The petitioner also participated in the said

auction proceedings and as per the requirement deposited 10 percent of the bid as earnest money. Initially the petitioner deposited the amount of Rs. 13,09,300/- and Rs. 10,65,300/- for the aforesaid House Nos. B-55 and B-76 at Wall Fort City, Bhatgaon, Raipur. The petitioner intimated the deposit being made to the respondent-bank vide his letter dated 19.02.2018. The deposit was made by transfer being made through RTGS receipt to the bank. After due of the proceedings, the respondents intimated the petitioner on 21.02.2018 of his being the highest bidder in the e-auction with a final bid of Rs. 1,43,53,000/-.

3. On receiving the confirmation of the respondent-bank, the petitioner deposited the remaining 15 percent of the bid amount. Immediately the petitioner deposited the balance of amount of Rs. 12,13,650/- which makes a total deposit of Rs. 35,88,250/- with the respondent-bank. After having deposited 25 percent of the bid amount and after receiving confirmation of the respondent-bank, the petitioner requested the respondents to provide for the sale confirmation and also for providing the documents of the property over which he has been the successful bidder. However, there was no response from the respondent-bank inspite of the petitioner making multiple requests for the same.

4. Meanwhile, the borrower of the bank namely, Atharva Infrastructure and others, when they learnt about the sale confirmation letter being issued in favour of the petitioner, they approached the High Court by filing a writ petition ie., WPC No. 542 of 2018, this Court vide order dated 26.02.2018 granted a

stay in favour of the petitioner restraining the Bank from issuance of the Sale Confirmation Letter against the aforesaid property. The writ petition was finally disposed off on 26.02.2018 whereby this Court had ordered the respondents to defer with the issuance of the sale certificate till the matter is taken up by the DRT wherein the Bank has already approached.

5. The contention of the counsel for the petitioner is that, the entire e-auction proceedings conducted by the respondent-bank was bad for the reason that auction notice that was issued or published in the daily newspaper did not disclose material information. The fact that a dispute in-respect of the same property was pending before the DRT was not reflected nor was it intimated to the petitioner before finalization of his auction bid. Likewise, it was also not disclosed by the respondent-bank that there was in-fact a dispute going on in-respect-of the actual possession of the property and the property put for auction was not in physical possession of the respondent-bank rather the property was still in possession of the original borrower. These are the facts which are not disclosed by the respondent-bank either at the time of the publication at a later stage before finalization of the auction proceedings or even before receiving 25 percent of the earnest money from the petitioner.

6. In view of the aforesaid factual background, the petitioner had approached the respondent-bank for refund of the earnest money of 25 percent that he has deposited with interest as he is no longer interested in the said property because of the ongoing dispute between the respondent-bank with the original borrower. It is this

request of the petitioner for refund of 25 percent of the earnest money amounting to Rs. 35,88,250/- with interest, which has led to the filing of the present writ petition by the petitioner.

7. This Court on the previous occasion i.e., 17.07.2020 had directed the learned counsel for the respondent-bank to seek instructions in-respect of the contention made by the petitioner. Learned counsel for the respondent-bank today made a submission that as far as the respondent-bank is concerned, they are still pursuing the legal remedy available to them of firstly having approached the DRT where unfortunately the respondent-bank have lost and now they have preferred an appeal before the DRAT. However because of the prevailing situation during the Corona Pandemic since the appellate Tribunal is not functional normally with regular hearings, the appeal preferred by the Bank could not be taken up. The contention of the learned counsel for the respondent-bank is that unless the Tribunal decides the appeal of the bank, it would be difficult for the respondent-bank to accept the request /prayer made by the petitioner for refund of EMD paid by him.

8. Be that as it may, considering the submission put-forth on either side, the facts which are undisputed is that admittedly, the petitioner has paid an amount of Rs. 35,88,250/- to the respondent-bank. The said payment was made as early as on 21.02.2018 i.e. it is almost 2 ½ years that the respondents have got the money and at the same time, the hard reality is that the petitioner is till date not got the possession of the property. Not only the petitioner has got the possession of the property but to his

surprise he has come to know that the respondent-bank itself was not in physical possession of the property when it was auctioned and that the property is still in the possession of the original borrower moreover the dispute with the respondent-bank with the original borrower is still before the DRT and the DRAT under provisions of the SARFAESI Act, 2002.

9. It is also not in dispute that the respondent-bank failed to disclose the fact that there was a dispute between the Bank and the original borrower and that there was a litigation going on before the DRT when the publication for auction was made. There was also no dispute to the fact that the bank does not have the actual or physical possession of the said property and rather the property is still in possession of the original owner. Under the circumstances, there is absolutely total uncertainty as to when the borrower would give the house handed over to the respondent-bank and the Bank would get the actual possession or physical possession of the property and the respondent-bank would be able to issue the sale certificates to the petitioner.

10. Under the given circumstances, if the petitioner approaches the respondent-bank in all fairness, the respondent-bank ought to have realised their mistake of not conducting the auction proceedings without disclosing the entire factual matrix of the case or should have realised that the auction has been conducted with material suppression of facts and thereby should have immediately acceded to the request of the petitioner for the refund of EMD amount paid by the petitioner. The period keeping the

petitioner waiting for the issuance of a sale certificate and for grant of possession of the property is too long a period and even today, there is no certainty of how much time the respondent should still take in issuing the sale certificate for granting property to the petitioner.

11. Given the said facts this Court is of the opinion that since the Bank has at the first instance lost before the DRT, it is a fit case where the writ petition deserves to be allowed and the respondent-bank is directed to immediately refund the EMD amounting to Rs. 35,88,250/- lying with the respondent-bank forthwith with interest at the rate of six percent per annum from the date, the amount was deposited with the respondent-bank ie, 21.02.2018 onwards to the petitioner.

12. Let the Order of this Court be complied within a period of thirty days from the date of receipt of copy of this Order.

13. With the aforesaid observation and direction, the present Writ Petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rahul