

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1999 of 2020

1. Gunjan Nalode, S/o Late Shri Pratap Rao Nalode, Aged About 46 Years, R/o House No. 331, Ward No. 09, Shikshak Nagar, Durg, District : Durg, Chhattisgarh

---- Petitioner

Versus

1. Canara Bank Through The Chief Executive Officer, Head Office, 112 J.C. Road, Bangaluru 560002.
2. Manager Canara Bank, Branch Telibandha, GE Road, Telibandha, Raipur, District : Raipur, Chhattisgarh
3. M/s C1 India Pvt. Ltd. Udyog Vihar Phase 2, Gulf Petrochem Building, Building No. 301, Gurgaon, Haryana 122015
4. Daanish Moeen, M/s C1 India Pvt. Ltd, Udyog Vihar Phase 2, Gulf Petrochem Building, Building No. 301, Gurgaon, Haryana 122015.
5. Mr. Bhisham Kumar Kukreja, R/o House No. 90/10, Ward No. 02, Nehru Nagar (East), Bhilai, District : Durg, Chhattisgarh
6. Ayushi Kukreja, R/o House No. 90/10, Ward No. 02, Nehru Nagar (East), Bhilai, District : Durg, Chhattisgarh
7. Smt. Sandhya Shukla, W/o Shri Satyendra Shukla, R/o Quarter No. A/4, BSNL Colony, Katora Talab, Raipur, Chhattisgarh 492001

----- Respondents

For Petitioner	:	Mr. Basant Kaiwartya, Advocate
For State	:	Mr. Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04.09.2020

1. The grievance of the petitioner in the present writ petition is the manner in which the respondents have conducted e- auction

proceedings on 07.08.2020 in respect of sale of House No. 90/10 in Ward No. 02 Nehru Nagar, East Bhilai, Durg measuring 1452.60 sq. ft.

2. The facts of the case is that the respondent-bank 5 and 6 had availed certain loan the Respondent No. 1 and 2. That against the said loan, the aforementioned property/house was kept as a security with the bank. Subsequently, on account of default on the part of the respondents 5 & 6, bank decided to initiate SARFAESI proceedings. Subsequently, the aforesaid house was put to auction. The respondents got an e-auction notice published on 21.07.2020 and the bids were to be made by the interested person before 07.08.2020 on which date the bid was to be finalised. That pursuant to the auction sale notice published by the Respondent No. 1, all those interested persons were required to get themselves registered with the Respondent No. 3, who was the service provider appointed by the Respondent No. 1 and 2 bank. That the serviced provider was inturn required to provide *username* and *password* to each of the persons who had successfully got registered. The petitioner in the present writ petition has also got himself registered and also deposited an EMD for an amount of Rs. 4.25 on 05.08.2020.
3. That upon registration, the petitioner was given with Username and Password by the service provider ie., the Respondent No. 3. With the given username and password, the petitioner on the date when the bid was being finalised on 07.08.2020 tried to get himself logged

in but for reasons best known, the petitioner could not be logged in inspite of all efforts. The petitioner immediately contacted the Respondent No. 3 informing them about the difficulty that the petitioner was facing in as much as the password which has been provided was not enabling him to get logged in.

4. The petitioner along with the writ petition has produced proof of telephonic calls that he has made with the Respondent No. 3 and finally the Respondent No. 3 informed the petitioner that the password which was provided was incorrect and they have therefore issued him with a fresh password. However, fresh password was issued to the petitioner at 01.01 p.m. that is after the bidding time was over which was only between 12 noon to 1:00 p.m.
5. The allegation of the petitioner is that he has been deliberately kept out of the fray by being provided with an incorrect username and password, as the Respondents were interested in finalising the bid in favour of the Respondent No. 7 who happened to be the only other person who had registered with the Respondent No. 3 as a bidder for the aforesaid property. The allegation of the petitioner also is that there appears to be a broad conspiracy and connivance between the respondents in ensuring that the petitioner who was the second person who had got himself registered be deliberately kept out of the bidding process and by the time he was provided with a new username and password, the time was already over. According to the petitioner, if he would have been given the password within the prescribed period of time of 12 noon to 1:00 p.m., the petitioner

could have participated and could have also put forth his offer over the said house for which the petitioner was in fact interested at. According to the petitioner the price to be quoted by the petitioner could have fetched more profit to the bank. For these reasons, the petitioner has filed the present writ petition seeking for a relief of quashment of the entire e-auction proceedings.

6. At the outset, this Court is of the opinion that the petitioner in the instant case has a statutory alternative remedy available u/s 17 of the SARFAESI Act, 2002. At this juncture, learned counsel for the petitioner submits that the petitioner is aware of this remedy but the reason to press upon the present writ petition is the fact that for a considerable period of time, the Debts Recovery Tribunal-Jabalpur bench is not functioning smoothly on account of the post of Presiding Officer lying vacant. That because of the effect of the Corona Virus, also the circuit bench is not taking up the matter for hearing regularly. According to Shri Amrito Das as of now, the applications which are being filed at Jabalpur Bench is being processed and heard by the Bench of DRT- Cuttack and where the applications filed are coming up for hearing only after a couple of months and in between the auction sale itself would be finalized by the respondent- 1 and 2 bank and the entire interest of the petitioner would get frustrated.
7. The counsel for the petitioner, therefore, prays that as of now, the petitioner may be given some breathing time to approach the concerned DRT and also to pursue his interim application before the

Bench at Cuttack. Meanwhile, the Respondent-Bank No. 1 and 2 may be restrained from finalising the auction sale proceedings to the extent that the Bank be restrained from issuing a Sale Certificate to the Respondent No. 7.

8. The counsel for the Respondent-bank No. 1 and 2 opposing the petition submits that the writ petition at the outset is not maintainable in view of the remedy available u/s 17 of the SARFAESI Act, 2002. Secondly, according to the counsel for the Bank, there was no error on the part of the respondents in the petitioner being unable in participating successfully in the e-auction proceedings. The counsel for the respondent-Bank 1 and 2 also referred to the auction notice which specifically had a note that the interested person should take appropriate measures to avoid any such situation with which they could find difficulty in participating in the e-auction proceedings. That if the petitioner has not taken any appropriate steps or if he has incorrectly used the password given to him, it is the petitioner alone who has to be blamed not the respondent-bank or the service provider.
9. Having heard the contentions put forth on either side, particularly taking note of the call history which the petitioner has enclosed along with the writ petition would show the efforts that he had been continuously making, trying to get himself logged in in the e-auction proceedings. The timing given in the call history would also reflect that it was not at the fag end of the bidding time, that he had started making calls to the Respondent No. 3 even before the e-auction

proceeds had started at 12 noon and since then he has been intimating the service provider as to his difficulty in getting logged-in, which the Respondent No. 3 finally accepted for having issued him with a wrong password and thereafter sending an email afresh with a new password at 01.01 pm in the afternoon that is after the e-auction proceedings was closed. Now, whether there was admittedly an error on the part of the respondents, whether there was a connivance or conspiracy in keeping the petitioner out of the fray is a matter which infact has to be dealt with by the concerned Tribunal provided the petitioner approaches u/s 17 of the SARFAESI Act, 2002.

10. However, considering the practical difficulty that the petitioner has expressed that the bench is not being available at Jabalpur and the matters are being taken up at the Bench in DRT – Cuttack and the matters which are taken up there are after considerable delay, this Court is of the opinion that the writ petition at this juncture can be disposed off granting liberty to the petitioner to file an application u/s 17 of the SARFAESI Act, 2002 before the DRT – Jabalpur within a period of ten days from the date of receipt of copy of this Order along with an application for interim relief as well.

11. Meanwhile, purely as an interim measure ensuring protection and the right of the petitioner to the extent that his claim does not get frustrated, and may be the bank also may fetch more price for the property, the Respondent-Bank 1 and 2 are directed not to proceed further with the e-auction proceeding which in other words means that the Respondent 1 and 2 Bank shall not issue a Sale Certificate

in favour of the Respondent No. 7 till the application for grant of interim relief is taken up for consideration by the DRT-Cuttack.

12. With the aforesaid direction, the writ petition stands disposed off.

**Sd/-
(P. Sam Koshy)
Judge**

Rahul