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

+ **W.P.(C) 449/2020 & CM APPL. 1236/2020**

Date of decision: 14.1.2020

SAPNA ARORA

..... Petitioner

Through: Mr. Anurag Rawat, Advocate.

versus

INDIAN OVERSEAS BANK AND ANR

..... Respondents

Through: Mr. Gyanendra Agrawal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

CM APPL.1237/2020 (Exemption)

1. Allowed, subject to just exceptions.

W.P.(C) 449/2020 & CM APPL. 1236/2020

2. The petitioner has approached this Court for the second time.

3. The petitioner's grievance is that the respondent no.1 bank is not complying with the directions issued by this Court on 13.12.2019 in W.P.(C)No.13108/2019. It is contended that respondent no.1 bank has proceeded to order a fresh auction of the subject property without adhering to the directions of this Court.

4. To be noted, the subject property is described in prayer clause "a" of the writ petition. Prayer clause "a" of the writ petition reads as follows:-

*" (a) set-aside E-Auction Sale notice dated 01.01.2020
Issue under SARFAESI Act for the Immovable property
i.e. measuring 1645.00 sq. fts. & terrace areas 120.00*

sq. ft. bearing Flat No.110, First Floor, Mahagun Maple Plot No.26, Block-F, Sector-50, Noida, U.P, passed by authorize officer under SARFAESI Act, 2002 Asset Recovery Management Branch Rachna Building, 4th Floor, 2 Rajendra Place, Pusa Road, New Delhi-110008;”

5. Besides what is noted above, it is also the grievance of the petitioner that the respondent no.1 bank has approached the District Magistrate at Gautam Budh Nagar, who, vide order dated 13.12.2019 has issued notice to the petitioner (i.e. Ms. Sapna Arora) and her husband Mr. Manoj Kumar on an application filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. It is stated that the order of the District Magistrate discloses that the said application was moved by the respondent no.1 bank wrongly qua the subject property based on the order dated 11.12.2018 passed by the Allahabad High Court in W.P. (C) No. 38578/2018.

6.1 The order of the District Magistrate is appended on page 37 of the paper book.

7. My attention in this regard has been drawn to the order of the Allahabad High Court dated 11.12.2018, to which I have made reference above, to demonstrate that it refers to an industrial property situate at Khasra No. 387, Khata No. 61, Kota Tehsil, District Mathura (in short “Mathura property”) and not to the subject property.

7.1 The argument being that the respondent no.1 bank has misled the District Magistrate as regards the immovable property qua which order has been issued by the Allahabad High Court.

8. Insofar as the subject property is concerned, it is the petitioner's case that even though this Court had directed on 13.12.2019 that the petitioner's proposal for One Time Settlement (in short "OTS") should be considered, the same has not be considered and the respondent no.1 bank has proceeded straightaway to issue an E-auction sale notice dated 01.01.2020.

9. It is averred that the sale of the subject property which concerns the present proceedings is slated for 21.01.2020.

10. Mr. Gyanendra Agrawal, who, appears on advance notice on behalf of the respondent no.1 bank says that vide communication dated 13.12.2019, the petitioner and her husband were informed that their proposal for full and final settlement, whereby Rs. 50,00,000/- was offered has been rejected.

11. Mr. Agrawal submits that, notwithstanding the rejection, the petitioner could participate in the impending auction concerning the subject property.

12. Having heard the learned counsel for the parties and perused the record placed before me, it appears that the District Magistrate has taken note of the subject property though it is not adverted to in the order dated 11.12.2018 passed by the Allahabad High Court.

13. Since, I am informed that the proceedings before the District Magistrate are slated for 17.01.2020, the petitioner would have, to my mind, an opportunity to bring this purported error to the notice of the District Magistrate on the said date. The District Magistrate would, thereafter, I am sure pass an appropriate order.

14. Insofar as the subject property is concerned, a copy of the communication dated 13.12.2019 whereby her OTS offer was rejected has been handed over to the counsel for the petitioner.

15. The petitioner, therefore, has the option not only to participate in the impending E-auction but also make improvements to her OTS proposal.

16. In case, a fresh proposal, which is substantially improved, is submitted by the petitioner, the respondent no.1 bank will, necessarily, be required to consider the same.

17. To be noted, as per the E-auction sale notice dated 01.01.2020, the dues payable by the petitioner and her husband as on 31.12.2019 have been pegged at Rs. 93,01,862.38/-. The reserve price has been fixed at Rs. 104.63 lakhs (inclusive of 1% TDS, as per Section 194 A of the Income Tax Act, 1961).

17.1 The petitioner will bear in mind these aspects while making a fresh proposal.

18. The writ petition is, accordingly, disposed of in the aforesaid terms.

19. Consequently, the pending interlocutory application shall stand closed.

20. For the purposes of good order and record, the Registry is directed to scan and upload the communication dated 31.12.2019 sent by the respondent no.1 bank to the petitioner and her husband.

21. *Dasti* under signatures of the Court Master.

RAJIV SHAKDHER, J.

JANUARY 14, 2020/c