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

\+ W.P. (C.) No. 2994/ 2020

KAILASH MEHENDIRATTA ..... Appellant

Through: Mr. Ajit Sharma & Mr. Mayank Aggarwal, Advocates.

versus

CENTRAL BANK OF INDIA & ORS. ..... Respondents

Through: Mr. Shadab Khan, Advocate and Ms.Swarnima Singh for respondent No.1.
Mr. Muneesh Malhotra, Advocate for respondent No.5.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **24.04.2020**

C.M. No. 10377-78/2020

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

W.P. (C.) No. 2994/ 2020 and C.M. No. 10379/2020

The petitioner has preferred the present writ petition to assail the order dated 17.04.2020 passed by the DRT-III, New Delhi in I.A. No.649/2020 in S.A. No. 207/2019 and the condition imposed upon the petitioner requiring him to deposit Rs. 50 Lakhs within 7 days with a nationalised bank, and the remaining sale consideration amount within 14 days thereafter, failing which, the petitioner's right to challenge the auction under Section 17 of the SARFAESI Act would stand forfeited. The petitioner also seeks a direction to the respondent No. 1 bank to maintain status quo qua the property in question, i.e. Plot No. B-34, Sector-63, Noida, Phase-III, Uttar Pradesh, which is the subject matter of auction, and to restrain the respondent from interfering with the physical possession of the petitioner in the subject property. The petitioner also seeks a direction that the petitioner be allowed to provide a bank guarantee, or any other security, equivalent to the remaining total sale consideration in terms of the impugned order dated 17.04.2020, instead of making the deposit of the amount with a Nationalised Bank.

It appears that in respect of a loan granted by respondent No.1 Central Bank of India to respondent No. 4 M/s D.S. Handicrafts Private Limited, respondent No. 2, mortgaged the property in question to respondent No. 1 Central Bank of India, while obtaining loan from respondent No. 1. The loan had been sanctioned on 23.04.2017. Post the sanction of the loan, the petitioner claims to have entered into an agreement to purchase the property in question from the owner i.e. respondent No. 2.

The petitioner claims that only after the agreement had been entered into on 09.05.2017, respondent Nos. 2 to 4 accepted the offer for grant of loan. The petitioner further states that the petitioner made payments under the agreement to respondent No.2 from time to time, and the agreement was further novated on 26.09.2017 – in terms whereof, the petitioner was placed in possession of the property.

It appears that on account of the default in repayment of the loan by the borrowers, i.e. respondent Nos. 2 to 4, the respondent No.1 bank proceeded under Section 13 of the SARFAESI Act to hold the auction of the said property.

The petitioner has preferred a Securitisation Application under Section 17 of the Act before the DRT to assail the said auction. That application is pending consideration before the DRT.

By the impugned order, while dealing with the application for interim relief moved by the petitioner, the DRT has placed a condition upon the petitioner that the petitioner should deposit the balance sale consideration payable by it under the agreement, in the manner, as mentioned hereinabove. The petitioner is aggrieved by the said direction.

We have heard Mr. Ajit Sharma and Mr. Mayank Aggarwal, learned counsels for the petitioner, as well as Mr. Shadab Khan, learned counsel for respondent No. 1. Mr. Malhotra has also put in appearance on behalf of respondent No. 5.

Having heard the submissions, we are not inclined to interfere with the impugned order directing the petitioner to deposit the balance sale consideration. This is for the reason that the petitioner is enjoying the possession of the property. The petitioner claims to have taken over the possession in terms of the novated contract. Neither the original, nor the novated contracts were ever got registered. The respondent bank had no notice of the alleged agreement set up by the petitioner. We are also informed that the petitioner has not even filed a suit for specific performance of its agreement to sell. The agreement between the petitioner and the original owner was entered into subsequent to the sanction of the loan by the bank vide its letter dated 28.04.2017. Thus, we reject the challenge to the direction issued by the DRT to the petitioner to create a deposit of the balance sale consideration. The said direction could be issued as a condition for entertaining the petitioner's challenge to the auction sale.

The petitioner is also aggrieved by the fact that the Tribunal has directed deposit to be made in the aforesaid manner during the period when the country is undergoing the lockdown on account of the COVID -19 Pandemic. The submission of Mr. Sharma is that the petitioner is not in a position to arrange the balance consideration during this period.

To this limited extent, we are inclined to grant time to the petitioner to comply with the directions issued by the Tribunal. The petitioner shall comply with the order passed by the Tribunal within two weeks from the date the lockdown is lifted by the Government. We make it clear that the deposit made by the petitioner shall not create any equity in favour of the petitioner, or create any fresh rights in the petitioner.

The petition stands disposed of in the aforesaid terms.

The observations made by us hereinabove are for the purpose of consideration of the present petition, and shall not come in the way of the Tribunal in adjudicating the Securitisation Application preferred by the petitioner on its own merits.

VIPIN SANGHI, J

SANGITA DHINGRA SEHGAL, J

APRIL 24, 2020
B.S. Rohella