

3 (D/L)
21-01-2021
debajyoti/kole

MAT 68 of 2021
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IA No:CAN/1/2021
Bansal Enterprises
Vs.
Bank of Baroda & Ors.

Mr. Utpal Bose,
Mr. Dhruba Ghosh,
Mr. Soumabho Ghosh,
Mr. S. Banerjee,
Mr. Utpal Majumdar,
Mr. Pushan Kar,
Mr. Sagnik Majumdar,
Mr. T. Das,
Ms. D. Chomal

... For the Appellant.

Mr. Avishek Guha,
Ms. R. Mall,
Mr. Rohit Bhattacharjee

... For Respondent Nos.1, 3, 4 & 5.

Ms. Pronoti Goswami,
Ms. Tapasi Sinha Palit

... For Union of India.

1. We have heard learned counsel for the appellant and learned counsel for the bank.

2. The lender bank initiated proceedings in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'). Measures were taken against the debtor and the security assets in terms of the provisions of Section 31(4). The appellant says that he was excluded from participating in the E-auction of the

mortgaged property in such a way that has led to deprivation of competition when the appellant was prepared to pay larger amount as consideration for the property in question. The plea of the appellant is that the E-auction was grossly faulty and has resulted in miscarriage of justice because the portal in question was not open during the period during which the offers had to be made. This is fundamentally a factual question. The further issue as to whether the appellant was entitled to sustain the challenge against the E-auction which has now crystallized is also a matter which would generate mixed question of fact and law.

3. Learned Single Judge has refused to entertain the challenge levied against the afore-noted proceedings making reference to Section 17 and Section 13 of the SARFAESI Act and relying on a string of judgments which obviously bound the learned Single Judge to come to the conclusion in terms of Article 141 of the Constitution of India that courts including the writ courts would be loath to interfere when alternative statutory remedies are available.

4. Learned Senior Counsel for the appellant, on the basis of the facts and circumstances in hand, has submitted that the question of arbitrariness itself is a matter that ought to be looked into in terms of Article 14 of the Constitution. We are not impressed with this for the simple reason that Section 17(1) of the SARFAESI Act takes within its sweep “any of the measures” referred to in sub-section (4)

of Section 13 of the Act. An E-auction is a process in terms of Section 13 which is primarily a procedure to bring the hypothetica to sale for realisation of the debt due to the bank from the debtor.

5. Learned counsel for the appellant has requested us to record the submission that his client is in possession. We record that submission without any commitment from any of the parties appearing in the matter, particularly, the bank, and the same will not create equitable consideration for or against any of the parties.

6. In the aforesaid factual premises, we do not see that the learned Single Judge had acted illegally, erroneously or with jurisdictional infirmity in refusing to entertain the writ petition. We leave open the rights of the petitioner to move the competent authority in terms of the statutory laws and dismiss the appeal along with the connected application.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)