

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 309 of 2021**

1. M/s. Khushi Enterprises, A Proprietorship firm through Proprietor Smt. Rakhi Chawla Aged 48 Years, W/o. And Power Of Attorney Motilal Chawla, R/o. Ramnagar, Indira Chowk, Kohka Road, Bhilai Distt. Durg (Chhattisgarh)
2. Smt. Rakhi Chawla Aged 48 Years W/o. Motilal Chawla R/o. Ramnagar, Indira Chowk, Kohka Road, Bhilai Distt. Durg (Chhattisgarh)

---- Petitioners**Versus**

1. Bank of Baroda, Through Branch Manager, Anamika Paradkar having office at Supela, Branch, Bhilai, Dist- Durg (Chhattisgarh)
2. Chief Manager, Shri V.S. Pandey, Bank Of Baroda, Supela Branch, Bhilai Distt. Durg (Chhattisgarh)
3. Vishwas Massey Through Manager ROSARB, Bank Of Baroda, Regional Office Sector 10, Bhilai Distt.- Durg
4. Santosh Kumar, Ex-Branch Manager, Bank Of Baroda, Supela Branch, Bhilai Distt. Durg (Chhattisgarh)
5. Reserve Bank Of India, Sunder Nagar, Raipur, Distt. Raipur (Chhattisgarh)

---- Respondents

For petitioners – Shri Sudeep Johri, Advocate.

For respondents No.1 and 2 – Shri Ankit Singhal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****18/03/2021**

Heard.

1. The facts of this case are that pursuant to the measure taken under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 25/09/2017 the symbolic possession of the immovable property, which was mortgaged was taken by the bank. Being aggrieved by such action, the petitioner preferred a petition before the DRT on 15/10/2017. In the meanwhile, the auction notice was issued on 12/02/2020 wherein the date of auction was fixed on 29/02/2020. The petitioner challenged the said auction proceeding. Subsequently, this auction took place and on 2/03/2020 the sale confirmation letter was issued, however on the application of the

petitioner, the DRT quashed the auction proceeding and all further proceeding and the petitioner was given liberty to deposit Rs.2 lakhs in 10 days. Further the date to deposit the amount was extended on 31/08/2020, however the petitioner failed to pay the amount of Rs.2 lakhs, therefore the DRT vacated the interim order on 1/10/2020 and fresh auction was ordered. The fresh auction took place on 26/02/2021 and eventually sale confirmation notice was issued on 5/03/2021 for sale of the property for a consideration of Rs.41,60,000/-.

2. Learned counsel for the petitioner would submit that value of the property is Rs.52,30,000/- as per Annexure P-6 which is valued by the registered valuer of the bank and even with the distress sale it will fetch much more value of the property as per valuer. Therefore the sale confirmation 5/03/2021 may not be acted upon. Learned counsel further submits that the effect would be that if a property is sold on a less value then the entire liability would be further on the head of the petitioner as recoverable dues. He further submits that due to the covid lock down the petitioner could not deposit the initial amount of Rs.2 lakhs which was ordered by the DRT. Consequently, the property of the petitioner which is much more in higher value cannot be sold for a lesser value. He places his reliance in case of **Mathew Varghese Vs. M. Amritha Kumar and others** reported in **(2014) 5 SCC 610**.

3. Learned counsel for the respondents No.1 and 2 would submit that despite time given to the petitioner, the petitioner could not deposit the amount of Rs.2 lakhs initially and eventually the interim order which was passed in favour of the petitioner was vacated and subsequently after vacation of the interim order, the fresh sale has been executed on 26/02/2021 and sale confirmation letter has been issued on 5/03/2021 for Rs.41,60,000/-.

4. Be that as it may, the valuation report which is placed on record Annexure P-6 shows the value of the property to be Rs.52,30,000/- and even the distress sale it is been shown to fetch Rs.47,07,000/-. Considering the considerable difference in the price even for distress sale and actual sale as there is gap of

around Rs.5-6 lakhs, this issue requires to be adjudicated upon. Since the matter pertains to SARFAESI Act and it is a disputed question of fact and also in view of the law laid down by the Supreme Court in case of **K. Virupaksha and another Vs. State of Karnataka and another** reported in **(2020) 4 SCC 440**, I am not inclined to interfere in this matter. However, taking into facts of this case, the petitioner would be at liberty to approach the DRT within a further period of 30 days from today and may move the suitable application on the pending application of the petitioner. Till then the sale confirmation letter 5/03/2021 shall not be acted upon.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE