

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7988 OF 2021
WITH
INTERIM APPLICATION NO. 3518 OF 2021**

M/s. Leena Impex	}	Petitioner
versus		
Bank of India and Ors.	}	Respondents

Mr. Sandeep Kumar Singh, for the petitioner.
Mr. O. A. Das, for the respondent nos. 1 and 2.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.
DATE :- DECEMBER 2, 2021**

PC :-

1. This writ petition is directed against forfeiture of Rs. 50 lakh by the respondent bank (secured creditor) on account of the omission and/or failure of the petitioner (purchaser) to deposit the balance amount of Rs.2.28 crore for purchase of the secured asset.
2. We have heard Mr. Singh, learned advocate for the petitioner and Mr. Das, learned advocate for the respondents and perused the materials on record.
3. When the negotiations between the petitioner and the respondents commenced for sale of the secured asset, the consideration amount was Rs. 2.74 crore. The petitioner had deposited Rs. 50 lakh as upfront payment and had also confirmed making the balance payment of Rs. 2.24 crore within 90 days of approval from the respondent bank. However, subsequently, the respondent no.2 by a

communication dated 2nd August 2018, agreed to sell the secured asset on payment of consideration amount of Rs. 278.77 lakh. Since the petitioner had deposited Rs. 50 lakh, it was called upon to pay the balance 228.77 lakh within 90 days. We find from the records that two letters were written by the petitioner to the respondent no.2, the first dated 3rd October 2018 and the other dated 19th October 2018, whereby certain documents were asked for, failing which it claimed refund of Rs. 50 lakh. The respondent no.2, by letter dated 29th October 2018, duly conveyed to the petitioner that whatever documents were available at its disposal had been made over and that the prayer of the petitioner for refund of Rs. 50 lakh cannot be accepted. By the subsequent letter dated 29th November 2018, forfeiture of Rs. 50 lakh was conveyed.

4. Having looked into the documents on record, we are of the opinion that the petitioner had no genuine intention to conclude the process of sale by depositing the balance amount and went on asking for time on grounds which are not germane. If indeed the documents furnished were deficient in any manner, the petitioner ought to have pointed out with some degree of clarity. It had asked for a 'NOC' to be issued by the Maharashtra Industrial Development Corporation (hereafter "the MIDC", for short), to which the respondent no.2 replied that NOC from the MIDC was obtained by the borrower to create mortgage and that the same had been furnished to the petitioner. Mr. Singh was asked by us as to whether there existed any statutory provision, akin to section 37A of the Maharashtra Land Revenue Code, which obliged

the respondent bank to sell the secured asset only after obtaining prior permission from the MIDC. However, it is submitted by Mr. Singh that he is not aware of any such provision. The petitioner having indicated in one of his letters that it was not receiving proper guidance for obtaining NOC from the MIDC, it should have immediately obtained appropriate legal advice instead of waiting and thereby allowing the period of 90 days to lapse. The conduct of the petitioner hardly inspires confidence.

5. Even otherwise, we find that the petitioner has been tardy, lethargic and indolent, and has unduly delayed its approach to the writ court. It had instituted a previous writ petition immediately after forfeiture, which it did not press on account of "imperfect pleadings". Despite grant of liberty to file a fresh petition by the order dated 13th December 2019 of a coordinate Bench, the petitioner chose to wait for nearly one and a half year to approach this Court. If indeed withdrawal of the first writ petition of the petitioner was owing to "imperfect pleadings", we fail to comprehend as to why the petitioner did not approach the Court with "perfect pleadings" even before the lock-down was announced on 24th March 2020.

6. Having regard to the conduct of the petitioner, we are not inclined to exercise discretion in its favour. The writ petition stands dismissed. There shall be no order as to costs.

7. In light of the dismissal of the writ petition, the interim application does not survive and stands disposed of as such.

SALUNKE
J V

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by SALUNKE J V
Date: 2021.12.03
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)