

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4579 OF 2019

(Nirala Kumar Singh S/o. Jai Prakash Singh

Vs.

Punjab National Bank & Anr.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Shri R.M. Tahaliyani, Advocate for the petitioner.
 Shri M.Y. Wadodkar, Advocate for the respondent No.1.
 Shri Anand Parchure, Advocate for the respondent No.2.

CORAM: **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **02nd SEPTEMBER, 2021.**

Heard.

2. The petitioner is an auction purchaser of the secured assets of the respondent No.1-Bank which comprise Apartment No. A-503, Wing "A", 5th Floor, "Lotus court", Plot Nos. 5, 6, 7 & 9, CS No. 1677, Sheet No.36, Corporation No. 47, Ward No. 66, Mouza Sitabuldi, Civil Lines, Nagpur and the petitioner has deposited total amount of Rs.44,15,250/-in installments, out of which an amount of Rs.15,00,000/- has been refunded to the petitioner, but the remaining amount of Rs.29,15,250/- has been forfeited by the respondent No.1-Bank. The reason stated by the respondent No.1-Bank for forfeiture of the amount is, failure of the petitioner to deposit the entire purchase price within three months from the date of acceptance of the bid of

the petitioner. This is, however, disputed by the petitioner. According to the petitioner, the real reason for not depositing the entire purchase money is different.

3. Learned counsel for the petitioner submits that it was due to the fact that there was no clarity regarding liability to pay the income tax dues, after the secured assets were attached by the Income Tax Department as per the order dated 21.12.2018. The auction purchase in the present case has been finalized on 17.12.2018. He further submits that the petitioner was never informed by the respondent No.1-Bank regarding attachment of the secured assets purchased by him in auction, and therefore, according to him, the forfeiture of the aforesaid amount by the respondent No.1-Bank is illegal.

4. What we find here is that the grievance raised by the petitioner is in respect of the action taken by the respondent No.1-Bank under Section 13(4) of Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"). The petitioner has raised certain questions of fact regarding not being aware of the income tax dues and attachment of the secured assets and the respondent No.1-Bank not informing him properly about passing of the attachment order. But, for resolution of such dispute, as per the law settled by the Hon'ble Apex Court in the case of *Agarwal Tracom Pvt. Ltd. Vs Punjab National Bank & Ors., in Civil*

Appeal No. 19847 of 2017 (Arising out of SLP (C) No. 33514/2016) decided on 27th November, 2017, the remedy for the aggrieved person is available before the Debt Recovery Tribunal (hereinafter be referred as “DRT”). In para 31 of the judgment, the Hon’ble Supreme Court has observed that when the auction purchaser is aggrieved by the action of the secured creditor in forfeiting of his money, he would be falling in the expression “any person” as specified under Section 17(1) of the SARFAESI Act, and therefore, he would be entitled to challenge the action of the secured creditor before the DRT by filing an application under Section 17(1) of the SARFAESI Act.

5. If any such application is filed, learned counsel for the respondent No.1-Bank submits on instructions that the respondent No.1-Bank shall not raise any objection as to maintainability of the application which may be filed by the petitioner before the DRT. The remedy so made statutorily available cannot be said to be not efficacious. Alternatively, the petitioner may also have remedy under ordinary law by filing civil suit against the borrower.

6. In view of above, we find that this petition is not maintainable and stands **dismissed** with liberty as above. All questions are kept open. No costs.

JUDGE

JUDGE