

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

WRIT PETITION NO.4903 OF 2019

Surjeet s/o Nandlal Pahuja ... Petitioner

Versus

Union of India and others ... Respondents

Mr. R.M. Bhangde, Advocate for Petitioner.

Ms. Mugdha R. Chandurkar, Advocate, for
Mr. U.M. Aurangabadkar, ASGI, for Respondent No.1.

Mr. Atul Pande, Advocate for Respondent Nos.4 to 7.

Mr. M.P. Khajanchi, Advocate for Respondent Nos.8 to 10.

**CORAM : NITIN JAMDAR &
ANIL S. KILOR, JJ**

DATE : 10 FEBRUARY 2021

P.C.:

Heard the learned Counsel for the Petitioner.

2. The Petitioner, who has tendered his bid pursuant to the notice of sale issued on 7 December 2018 by the Respondent No.2-Bank, has challenged the action of the Respondent- Bank of cancelling the auction by order dated 29 June 2019 and refunding the amount of Rs.26,14,750/- deposited by the Petitioner towards 25% of the amount of sale of the property.

3. The reply-affidavits have been filed and the objection is being taken that the Petitioner has an alternate remedy of

approaching the Debts Recovery Tribunal.

4. The learned Counsel for the Petitioner also does not dispute that the Petitioner has a remedy of approaching the Debts Recovery Tribunal, but contends that in view of the facts of this case where the Respondent- Borrowers and the Bank have deprived the Petitioner of the bid submitted, using the process of this Court, and where the Petitioner is entitled to invoke the principle of restitution, the Writ Petition should be entertained.

5. The learned Counsel for the Petitioner submitted that after the Petitioner had submitted his bid and deposited the amount pursuant to the sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the SARFAESI Act”), the Borrowers had filed Writ Petition No.8747 of 2018, in which notices were issued on 24 December 2018 and it was directed that if any auction was held, the same was subject to the result of the Petition and no confirmation of the auction should be done until further orders of this Court. According to the Petitioner, thereafter on 27 December 2018, the Petitioner was informed that the Petitioner can deposit remaining 75% of the amount after the Petition filed by the Respondent- Borrowers is disposed of. Thereafter, the Petitioner filed an application for intervention on 25 June 2019 in Writ Petition No.8747 of 2018. The Petition came up on board on 25 June 2019, wherein the following order came to be passed :

“The application raising objection to the compromise of the petitioner with the respondent bank filed on behalf of the proposed intervener is taken on record.

We have gone through the pursis dated 15.04.2019. It is informed to the Court on behalf of respondent no.3 that, respondent no.3 has conducted the auction on 26.12.2018 and the highest bidder has also bid for property for an amount of Rs.1,10,03,000/-, but due to the order passed by this Court, the highest bid is yet to be confirmed by respondent no.3.

At this stage, based on the developments noted in the pursis dated 15.04.2019 and also as per the instructions received, Shri S.K. Mishra, learned senior counsel seeks leave of the Court to withdraw the petition as there is a compromise between the petitioner and respondent no.3-banbk.

Leave to withdraw the petition is granted and petition is disposed of as withdrawn. Intervention application (CAW No.1621 of 2019) and also application filed today, objecting the comprise is also disposed of as infructuous.”

6. It is the contention of the Petitioner that the Respondent-Bank had filed a pursis on 15 April 2019 stating on record that the Petitioner had deposited 25% of the amount and the bid is yet to be confirmed in view of the order passed. The contention of the Petitioner is that after the Petition was withdrawn, instead of confirming the sale in favour of the Petitioner, the Respondent-Bank entered into a compromise with the Respondent- Borrowers and has sold the property to them. According to the Petitioner, the said sale is under-valued and the public money, therefore, is

lost, which is against the public interest and needs to be corrected in view of the law laid down in the case of *Indian Bank v. Blue Jaggers Estates Limited and others*¹. It is also contended that since the Petitioner's right to get the auction confirmed was deferred and defeated in this manner, the Court ought to invoke the principle of restitution, as enumerated in the decision of the Apex Court in the cases of *Kalabharati Advertising v. Hemant Vimalnath Narichania and others*² and *Commissioner of Income-tax, Madras and another v. Vinod Kumar Didwania*³.

7. The learned Counsel for the Respondents point out that neither the Petition was filed nor it was disposed of in a surreptitious manner. The Borrowers (the Petitioners therein) had filed the Writ Petition, which was entertained, and the stay was granted to confirmation of auction. While withdrawing the Petition, the Respondent- Borrowers had placed on record that there was a compromise between the Borrowers and the Respondent- Bank and leave was sought to withdraw the Petition, which was granted. The intervention application and the application objecting to the compromise were looked into by the Court and were disposed of. The argument of restitution put forth by the learned Counsel for the Petitioner, therefore, cannot be accepted in view of the availability of alternate remedy. The argument, which is advanced today, was open for the Petitioner to argue when Writ Petition No.8747 of 2018 was withdrawn.

1 (2010) 8 SCC 129

2 (2010) 9 SCC 437

3 AIR 1987 SC 1260

In fact the Petitioner did object to the comprise, which application was not considered. However, we do not need to conclude this aspect any further in view of the fact that we were inclined to accept the contention of the Respondents regarding availability of alternate remedy. The observation is only to the effect that because the Respondent- Borrowers are stated to have abused the process of law, a Petition, in spite of an alternate remedy is available, is not correct. Ultimately, the Petitioner, who is an auction purchaser and who has submitted his bid, is taking exception to the cancellation of the auction. Whatever grounds that are available to the Petitioner to seek such a relief, including the conduct of the Respondent- Bank and the Respondent- Borrowers in the Writ Petition, are available to the Petitioner to urge before the Debts Recovery Tribunal. The view taken by Apex Court in the cases of *Punjab National Bank v. O.C. Krishnan*⁴ and *United Bank of India v. Satyawati Tondon*⁵, which view has been reiterated in the cases of *Union Bank of India v. Panchanan Subudhi*⁶ and *Kanaiyalal Lalchand Sachdev v. State of Maharashtra*⁷, has stressed on the fact that when the statutory alternate remedies are available under the DRT Act and the SARFAESI Act, the writ jurisdiction under Article 226/227 of the Constitution cannot be invoked and the High Court, in view of the availability of an alternate remedy, ought not to interfere in such matters. The Apex Court, in the case of *Satyawati Tondon*, noted with serious concern that despite repeated pronouncement, the

4 (2001) 6 SCC 567

5 (2010) 8 SCC 110

6 (2010) 15 SCC 552

7 (2011) 2 SCC 782

High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226/227 of the Constitution. This occasional note is not restricted to invocation of writ jurisdiction by the Borrowers alone, but is based on the fact that the DRT Act and the SARFAESI Act conjointly constitute a Scheme for redressal of grievances in respect of loans advanced by the Bank and their recoveries.

8. In the light of the above position, we are not inclined to exercise writ jurisdiction under Article 226/227 of the Constitution, in view of availability of a statutory alternate remedy to the Petitioner.

9. The Writ Petition is accordingly disposed of.

10. As stated above, all the contentions of the Petitioner are kept open. We clarify that the observations made above are in the context of non-exercise of writ jurisdiction under Article 226/227 of the Constitution.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Lanjewar

Prashant
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