IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16517 of 2020

Mrs.Indra Gandhi ...Petitioner

-vs-

M/s.Fullerton India Home Finance Company Ltd,
Rep. by its Authorised Officer,
Registered Office at "Megh Towers",
3rd Floor, Old No.307, Poonamallee High Road,
Maduravoyal, Chennai - 600 096. ...Respondent

Petition filed under Article 226 of the Constitution of India praying for issue a Writ of Certiorarified Mandamus calling for the records relating to the letter dated 10.08.2020 issued by respondent and quash the same and direct the respondent to extend the time to pay the remaining amount of Rs.54,25,000/- with interest for belated payment to the respondent bank by the Petitioner.

For Petitioner : Mr.G.Ethirajulu

For Respondent : Mr.Ashokapathy for
M/s.Pass Associates

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ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner questions the propriety of the respondent secured creditor to forfeit an amount of Rs.20.75 lakh that the petitioner as the auction-purchaser had deposited in respect of

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an auction sale conducted on March 25, 2020 at which the petitioner bid Rs.76 lakh.

2. The petitioner had put in an earnest deposit prior to the bid. The bid documents required the balance consideration to be paid within 15 days. The petitioner paid a token amount on the date of the auction and in driblets thereafter. According to the petitioner, since the lockdown was declared on or about March 25, 2020, it was difficult for the petitioner to arrange the funds to meet the payment. The petitioner says that the petitioner made subsequent attempts to pay and even made appeals to the secured creditor to enlarge the time, but the secured creditor did not pay any heed and conducted a subsequent auction at which the highest bid received was of value of Rs.76.50 lakh.

3. For one, the petitioner has chosen a lame excuse since the lockdown may have been declared a day or two prior to March 25, 2020 when the auction was held. At any rate, as on the day that the auction was held, that the lockdown would be imposed and implemented was well within the knowledge of all and sundry.

4. It is understandable as an immediate fallout of the unprecedented lockdown, some kind of inconvenience would be faced over the next seven or ten days or even a month, but there is no plausible excuse which is proffered by the petitioner to justify the non-payment for several months thereafter despite the terms of the contract obliging the petitioner to pay within 15 days of the date of the auction.

5. It also appears from the papers relied upon by the petitioner that the secured creditor had issued notices in August, 2020 and thereafter reminding the petitioner herein that she was in breach. Ultimately, the secured creditor informed the petitioner herein of the subsequent auction proposed to be conducted by the secured creditor for re-sale of the same assets. Even then it does not appear that the entire balance amount was tendered to the secured creditor before the date of the auction so that the further sale of the same asset could be avoided.

6. The secured creditor submits that the petitioner herein is more intricately connected to the secured asset than as the mere auction-purchaser at a sale. According to the secured creditor, the petitioner was the original owner of the property and had transferred the same to some other. The secured creditor also asserts that it is entitled to forfeit the money in view of the failure on the part of the petitioner to make the balance payment and the inconvenience that the secured creditor had to go through in conducting a further auction.

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7. There is no doubt that a clause in the nature of forfeiture permits the amount deposited to be forfeited. However, in equity, a party is not entitled to unduly enrich itself. There are cases and cases. In a particular matter, two percent of the entire consideration may have been deposited and the forfeiture of such amount may be found to be justified. In another case, a party which has deposited 90% of the consideration may be able to successfully urge that such quantum should not be permitted to be forfeited when it was ready to pay the balance sum, albeit after a delay. In balancing the equities in the present case, one cannot discount the unacceptable conduct of the petitioner in failing to make the payment and needlessly stretching time with a view to delay the inevitable. The secured creditor must also be seen to have waited for a considerable and reasonable period before it resorted to the second auction sale.

8. While the general principle that a person is entitled to be compensated in damages for any breach or inconvenience that it suffers has to be kept in mind, a forfeiture clause has also to be seen as a nature of penalty which is permissible. Accordingly and considering that the subsequent sale has fetched a price of Rs.76.50 lakh against the original bid of Rs.76 lakh, the secured creditor in this case is permitted to retain or forfeit a sum of Rs.10 lakh out of the consideration tendered by the petitioner herein and refund the balance Rs.10.75 lakh within a period of four weeks from date. The forfeited amount must be credited against the dues of the borrower.

9. W.P.No.16517 of 2020 is disposed of. There will be no order as to costs. Consequently, W.M.P.No.20493 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Authorised Officer,
M/s.Fullerton India Home Finance Company Ltd,
Rep. by its Authorised Officer,
Registered Office at "Megh Towers",
3rd Floor, Old No.307, Poonamallee High Road,
Maduravoyal,
Chennai - 600 096.

+1cc to M/s. Pass Associates, Advocate, S.R.No.18091

W.P.No.16517 of 2020

LN(CO)
RN(29/03/2021)

HIGH COURT OF JUDICATURE MADRAS
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