

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19042 of 2020

Rubina

..Petitioner

vs.

The Authorised Officer,
M/s.Axis Bank Limited,
RAC, Kodambakkam,
Chennai - 600 024.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned letter dated 05.10.2020 issued by the respondent under Rule 9 (5) of the Security Interest (Enforcement) Rules, 2002 and quash the same and reasonable time frame to be fixed by this Court for paying the balance amount towards 75% of the balance purchase price by the petitioner.

For Petitioner : Mr.Adithya

For Respondent : Mr.R.Sreedhar

ORDER

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

The grievance of the petitioner is that the respondent secured creditor did not inform the petitioner of certain encumbrance pertaining to the asset sold under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Indeed, the petitioner had no initial grievance and had made a bid at the auction sale conducted on August 27, 2020. However, the petitioner deposited only 25% of the consideration and did not pay any further. The petitioner's case is that the petitioner tried to obtain loans from elsewhere to finance the

petitioner's purchase, but the petitioner was impeded by the property standing encumbered in some third party's favour. The further grievance of the petitioner is that the bank has purported to forfeit the consideration tendered without affording the petitioner a chance to pay the balance amount, particularly since the second surge of the pandemic stood in the way of the petitioner arranging for money.

3. The secured creditor says that it duly issued notices to the petitioner. According to the secured creditor, it has no authority to extend the period of payment beyond 90 days from the date of the auction.

4. The secured creditor also informs the Court that no subsequent steps have been taken for sale of the property in question since orders have been passed by the Debts Recovery Tribunal on the borrower's application. It appears that the borrower assailed the step taken by the secured creditor to sell the asset, whereupon the secured creditor informed the appropriate tribunal that the sale in favour of the petitioner herein could not go through because the petitioner failed to make the balance payment within the stipulated time. As a consequence of such submission, the secured creditor has been restrained from taking further steps to sell the property.

5. However, the secured creditor says that it has duly forfeited the amount which has been tendered by the petitioner and no question arises of the sale going through or of the consideration being returned.

6. The Writ Court is not the appropriate forum to adjudicate as to whether the forfeiture or the quantum thereof is appropriate and as to whether the secured creditor in this case is obliged to extend the time for making the balance payment by the petitioning-auction purchaser. There is no dispute that the secured creditor has no authority to enlarge the time beyond 90 days from the date of auction. There is also no dispute that such date has long passed and the secured creditor has asserted that it has forfeited the consideration tendered by this petitioner.

7. The right to forfeit has, ordinarily, to be balanced against the rule against unjust enrichment. Merely because there is a forfeiture clause does not imply that the entire amount deposited has to be forfeited. The forfeiture clause, like an earnest money deposit clause or a liquidated damages clause, has to be regarded as a genuine pre-estimate of the loss that may have been incurred, but when a forfeiture clause does not indicate an amount but provides that the entire amount tendered would be forfeited, it may not be permissible to

forfeit, say 99% of the payment made for the default in depositing the balance 1%. Thus, the quantum that can be forfeited will depend on the extent of the loss or damage suffered by the party not in breach and this is, essentially, a question of fact that has to be adjudicated by an appropriate forum. The High Court, in exercise of the jurisdiction under Article 226 of the Constitution, is not such forum.

8. Accordingly, W.P.No.19042 of 2020 is disposed of by permitting the petitioner and the respondent secured creditor to work out their remedies regarding the forfeiture and the extent thereof before an appropriate forum entitled to receive the action. There will be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

sasi/bbr

To:

The Authorised Officer,
M/s.Axis Bank Limited,
RAC, Kodambakkam,
Chennai - 600 024.

W.P.No.19042 of 2020

GSN(CO)
RGA(14/07/2021)

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