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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 14.01.2021**

% **LPA 573/2019 and C.M. Nos. 39796/2019 & 39798/2019**

ALLAHABAD BANK & ORS ..... Appellants

Through: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam & Mr. Nipun Sharma, Advocates.

versus

SHIPRA PANDEY & ORS ..... Respondents

Through: Ms. Nandita Abrol, Advocate for respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. This Letters Patent Appeal is directed against the judgment dated 24.07.2019 passed by the learned Single Judge in W.P.(C.) No.3984/2018 preferred by the respondent No.1. By the impugned judgment, the learned Single Judge allowed the said writ petition and held that the respondent No.1/ writ petitioner was entitled to refund of the sale amount of Rs.1,33,45,000/-. The learned Single Judge also directed that the respondent No.1 shall be entitled to refund of the expenditure incurred by her on e-stamp duty to the tune of Rs.5,30,800/- and a further amount of

Rs.1,33,700/- towards the registration charges in respect of the sale certificate/deed. Respondent No.1 had raised a certain bill to contend that she had incurred expenditure on renovation of the property in question and, in respect thereof, the appellant bank was directed to appoint a valuer from its panel to assess the value of the work carried out by the respondent No.1 for renovation of the property in question within eight weeks. The learned Single Judge directed that the amount valued shall be paid to the respondent No.1/ writ petitioner within two weeks of such valuation. The aforesaid amounts of Rs.1,33,45,000/-, Rs.5,30,800/- and Rs.1,33,700/- directed to be refunded to the respondent No.1 were to carry interest @ 7% per annum computed from the date when the amounts were paid by the respondent No.1 pursuant to the auction purchase, till the date of refund.

2. The background in which the aforesaid reliefs were sought by the respondent No.1 / writ petitioner, and came to be granted to her, may now be noticed.

3. On 08.08.2017, a public notification for e-auction was published by the appellant/ Allahabad Bank in the newspaper containing a list of properties to be made available for auction on 28.08.2017 under the SARFAESI Act, 2002. The list of properties included property No. 40/53, First Floor, Chittranjan Park, New Delhi admeasuring 160 sq. yards. The respondent No.1 participated in the said bidding process in respect of the said property and gave a bid for Rs.1,33,45,000/- which was accepted by the appellant and a Sale Certificate was issued in her favour on 04.09.2017. The respondent No.1 claimed that she took a loan of Rs.1 Crore carrying interest

@ 12% per annum from the ICICI Bank in order to pay the sale consideration. Admittedly, the respondent No.1 was placed in actual vacant physical possession of the said property by the appellant Allahabad Bank after receipt of the entire consideration.

4. Respondent No.1 claimed that since the property was not in a good condition, she spent Rs.13 Lakhs for renovation so as to make the said property habitable. She also deposited Rs.5,30,800/- as e-stamp duty for registration of the Sale Certificate with the office of the Sub-Registrar, Mehrauli, New Delhi, apart from an amount of Rs.1,33,700/- towards registration charges for registration of the Sale Certificate and completion of all the formalities in the office of the Sub-Registrar, Delhi.

5. Respondent No.1 claimed that she was shocked when, on 04.01.2018, the Sub-Registrar refused to release the Sale Certificate / Deed to her on the ground that the Economic Offences Wing (EOW), Crime Branch had issued a restraint order to the Sub-Registrar, not to transfer the said property. On inquiry, she learnt that one FIR bearing No. 0296/2014 dated 10.11.2014 had been registered against one Prashant Kapoor. She further claimed that this encumbrance was not notified in the e-auction notice issued by the appellant bank and the appellant bank had not informed the public at large, including the respondent No.1, that the Sub-Registrar had been restrained from registering the transfer of the property in question. She claimed that she was a *bona fide* purchaser of the said property, for which she had paid a huge amount and also spent substantial amount on its renovation. Consequently, she sent a communication on 04.01.2018 to the appellant

bank disclosing the difficulty being faced by her in getting the Sale Certificate/ Sale Deed released from the office of the Sub-Registrar owing to the pendency of the said FIR. She also got a legal notice issued to the appellant bank on 19/ 22.02.2018. In response, while admitting that the said property had been sold through e-auction, the appellant bank claimed that it was not responsible for any defect in the title as property has been sold on *'as is where is'* basis. Consequently, the respondent No.1 preferred the writ petition in question seeking the following reliefs:

> *"a. Quash the sale certificate dated 04.09.2017, issued and signed by the by the Authorized Officer of the Respondent No. 3 and direct the appropriate authorities to take strict action against the Respondent No. 3;*
>
> *b. Direct the Respondent No. 3 to refund the amount of Rs.1,52,59,500/- paid by the Petitioner as inclusive of total sale consideration amount and the additional amount spent by the petitioner on the property in question along with interest at the rate of 12%;*
>
> *c. Direct the Respondent No. 3 to pay the interest paid@12% on the loan amount of Rs. 1 Crores taken by the Petitioner from ICICI Bank to purchase the property in question;*
>
> *d. Direct the Respondent No. 3 to pay the compensation of Rs.50,00,000/-(rupees fifty lacs only) in respect of the loss of reputation, time and money ;*
>
> *e. Pass such other and further order(s) and grant such other reliefs in favour of the Petitioner and against the Respondents, as this Hon'ble Court deems just and proper in the facts and circumstances of the case and in the interest of justice and equity."*

6. The Allahabad Bank filed its counter-affidavit. Several objections were taken, but we need not be detained by them as they are not relevant and learned counsel for the appellant has not pressed any argument in respect of the finding returned by the learned Single Judge on those aspects.

7. The appellant averred that it was not aware about the involvement of the property in question in case FIR No.296/2014 under Sections 406/420/34 IPC registered at PS-Defence Colony. It also stated that the officials of the Allahabad Bank offered their cooperation in getting the Sale Certificate/ Deed of the property in question released from the office of Sub-Registrar and that they are still ready to extend their support for the same. It was claimed that the bank was not responsible for any defect in the title of the property which had been sold on *'as is where is'* basis. The appellant also disputed the claim of the respondent No.1/ writ petitioner having incurred additional expenditure on renovation, etc.

8. The learned Single Judge after rejecting the appellant's assertion regarding maintainability of the writ petition (which argument has not been pressed by learned counsel for the appellant before us) proceeded to determine whether the respondent No.1/ writ petitioner was entitled to refund of the amount of Rs.1,52,59,500/- paid by her, which included the total sale consideration amount spent by her on e-stamp duty, registration charges and on renovation.

9. The learned Single Judge observed that the only plea taken by the appellant/ Allahabad Bank is that it is not responsible for any defect in the title, as the property had been sold on *'as is where is'* basis. The learned

Single Judge took note of the auction notification issued by the Allahabad Bank – which was filed along with the writ petition by the respondent No.1/ writ petitioner, and observed that the same does not specify any encumbrance on the property. The learned Single Judge held that the appellant bank – being the secured creditor, was obliged to set out in the sale notice, all things which the authorized officer considered it material for a purchaser to know, in order to judge the nature and value of the property. For this, reliance was placed on Rule 8(6)(f) of the Security Interest (Enforcement) Rules, 2002. In paragraph 13, the learned Single Judge observed:

> *"13. If a stipulation of encumbrance is put then the purchaser cannot contend his / her ignorance with regard to the encumbrance. In the absence of such a stipulation, the purchaser being a bona fide purchaser without knowledge of encumbrance, the plea of the respondent Bank that it was not aware about the involvement of the property in question in criminal case bearing FIR No. 296/2014 under Section 406/420/34 IPC would not absolve the respondent Bank of the liability of selling the property, which cannot be owned by the purchaser in the absence of a registration of the Sale Certificate."*

10. The learned Single Judge relied upon two decisions – one of the High Court at Hyderabad and the other of the Allahabad High Court, wherein it has been held that even when an asset sold under the SARFAESI Act is sold on *'as is where is'* and *'as is what is'* basis, the seller is bound to disclose to the buyer any material defect in the property, or in the sellers title thereto. It was held that a duty is cast upon the authorized officer of the bank to disclose to the auction purchaser any material defect in the title, failing

which it could be construed that the purchaser was misled. The immunity claimed by the bank – on the pretext of sale on *'as is where is'* basis, did not absolve the secured creditor/ bank to make a due diligence/thorough search in respect of the property before proposing its sale.

11. The learned Single Judge relied on a Coordinate Bench decision of this Court in ***Royal Star Trading Company Vs. IFCI Limited***, MANU/DE/2267/2014, wherein the auction purchaser sought refund of the sale consideration since the possession of the property sold was not delivered. The Court rejected the defence of the financial institution which sold the property under the SARFAESI Act, that the financial institution was absolved of its obligation to deliver the possession of the property purchased, merely because the purchaser was obliged to inspect the asset/ property before its purchase.

12. Yet another decision of the Madras High Court in ***Jai Logistic Vs. The Authorised Officer, Syndicate Bank,*** MANU/TN/1161/2010, was relied upon by the learned Single Judge to support his decision. Consequently, the learned Single Judge allowed the writ petition in terms, as aforesaid.

13. The submission of learned counsel for the appellant/ Allahabad Bank, firstly, is that the appellant bank, just like Respondent No.1, was also not aware of the communication sent by the EOW to the Sub-Registrar of Assurances not to transfer the property in question on account of the case FIR No.296/2014 under Sections 406/420/34 IPC registered at PS-Defence Colony, New Delhi, being pending. He submits that, in fact, the EOW had

no jurisdiction to issue any such communication to the Sub-Registrar of Assurances and, secondly, the Sub-Registrar of Assurances was not bound by any such instruction or direction of the EOW.

14. He points out that the Supreme Court in Crl. Appeal No.1481/2019 titled ***Nevada Properties Pvt. Ltd. Through Its Director Vs. The State of Maharashtra***, 2019 (12) SCALE 826, had in similar circumstances, held that such a communication issued to the Sub-Registrar of Assurances is without any authority. He submits that this decision of the Supreme Court was rendered after passing of the impugned judgment. Whereas the impugned judgment was rendered on 24.07.2019, the judgment of the Supreme Court came to be delivered on 24.09.2019.

15. He submits that soon after the said decision was rendered, the appellant proceeded to file a writ petition before this Court – being W.P.(C.) No. 11662/2019 titled ***Allahabad Bank Vs. Joint Commissioner of Police, Economic Offences Wing & Others***, as a consequence of which, the said communication of the EOW dated 16.03.2015 addressed to the Sub-Registrar-III, Mehrauli Delhi was withdrawn vide letter No.6349/R-ACP/SEC-VI/EOW dated 05.12.2019.

16. Learned counsel further submits that the respondent No.1/ writ petitioner did not place before the learned Single Judge the complete e-auction notice. Only the advertisement published in the newspaper was filed by her, but not the detailed terms & conditions, to access which the advertisement itself provided the relevant web link. He submits that had the terms & conditions been placed before the learned Single Judge, the learned

Single Judge would not have held in favour of the respondent No.1/ writ petitioner. In this regard, he has drawn our attention to the detailed terms & conditions which not only provided that the sale of the property put to auction was on *'as is where is'* basis; *'as is what is'* basis, but; also provided in clause 19 that:

> *"19. The Authorized Officer will not be held responsible for any charge, lien, encumbrance, property tax, or any other dues to the Government or anybody in respect of the property under sale."*

17. Learned counsel submits that Respondent No.1 is equally to blame – if not more, because she did not do due diligence before participating in the e-auction and giving her bid.

18. Learned counsel submits that the learned Single Judge proceeded on the foundation that the stipulation of encumbrance had not been put in the advertisement, which is not correct. He further points out that even while executing the Sale Certificate, the appellant bank had stated that *"the sale of the scheduled property was made free from all encumbrances* ***known to the secured creditor****"*.

19. Learned counsel further submits that, in fact, there was no encumbrance on the property in question and this is evident from the fact that, firstly, the EOW had sent its communication dated 16.03.2015 to the Sub-Registrar of Assurances without any authority of law or jurisdiction and, secondly, the same was withdrawn without any consideration being paid. The communication dated 16.03.2015 could not be termed as an

encumbrance on the property in question. It was merely an unauthorised obstruction by a third party, i.e. the EOW, Crime Branch, which was subsequently withdrawn. He submits that the appellant bank was not, in any way, responsible for the respondent No.1 not being able to get the Sale Certificate/ Deed released from the Sub-Registrar.

20. Learned counsel further submits that the grievance raised by the respondent No.1 no longer survives, since she is free to secure the registered Sale Certificate/ Deed from the Sub-Registrar, since the EOW has issued the communication on 05.12.2019. He submits that the respondent No.1 has not really been put to any real prejudice, since the respondent No.1 was put in actual physical and vacant possession of the property in question and she even claimed to have carried out repair and renovation works on the property by incurring expenditure without any let or hindrance. Thus, it was open to her to occupy and use the property without any let or hindrance. The only inconvenience suffered by the respondent No.1 was that she could not get the registered Sale Deed/ Title Deed for the property for some time – for which the appellant bank is not responsible in any way. The appellant bank filed the writ petition before this Court to get the communication of the EOW withdrawn in the light of the judgment of the Supreme Court in ***Nevada Properties Pvt. Ltd.*** (supra). Even the respondent No.1 could have done the same, but she does not take any such step.

21. Learned counsel, therefore, submits that since the fundamental premise on which the impugned judgment has been rendered does not survive, namely, the inability of the respondent No.1 to obtain the registered

Sale Certificate/ Deed from the Sub-Registrar of Assurances, the impugned judgment – in the changed circumstances, cannot be sustained and the writ petition is liable to be dismissed.

22. On the other hand, the submission of learned counsel for the respondent No.1 is that since the respondent No.1 could not secure clear title to the property, she has not only suffered monetary loss, but she acquired another property and that she is, therefore, not interested in retaining the property in question. She, therefore, submits that the respondent No.1 is entitled to refund of her amount, as awarded by the learned Single Judge.

23. Learned counsel further submits that the appellant failed to carry out due diligence before putting the property in auction despite the letter of EOW placing an embargo on the transfer of the property. She submits that it was a failure on the part of the appellant in carrying out due diligence which led to the respondent No.1 being misled into purchasing the property in question *bona fide* in public auction. She submits that even while issuing the Sale Certificate, the appellant had represented to the respondent No.1 that the property is free from all encumbrances, which was not the case.

24. We have considered the submissions of learned counsels and perused the complete record. In our view, the change in the fundamental scenario brought about by the withdrawal of the letter of EOW dated 16.03.2015 vide letter dated 05.12.2019, in the light of the decision of the Supreme Court in ***Nevada Properties Pvt. Ltd.*** (supra) has completely changed the complexion of the case. In pursuance of the auction sale, after receipt of the sale consideration, the respondent No.1/ writ petitioner was placed in actual

vacant physical possession of the property and she even exercised her ownership right by undertaking renovation works therein without any let or hindrance. Her possession was never disturbed or questioned/ obstructed, and she continues to remain in actual physical and beneficial possession. Therefore, it was open to the respondent No.1/ writ petitioner to occupy and use the said property from the date she was put in possession.

25. In the light of the decision of the Supreme Court in ***Nevada Properties Pvt. Ltd.*** (supra), it is clear that the EOW never had any authority or jurisdiction to issue the communication of the kind they issued on 16.03.2015 to the Sub-Registrar of Assurances. The appellant was not responsible for the same, and we have no reason to believe that the appellant was aware of it, and yet, did not disclose the same to the public at large while putting the property to auction. In fact, even the Sub-Registrar of Assurances was not bound by the said communication dated 16.03.2015 which had been issued without jurisdiction or authority of law. Therefore, the refusal of the Sub-Registrar of Assurances to deliver the registered Sale Certificate/ Deed to the respondent No.1/ writ petitioner was not due to any fault of the appellant. We also find merit in the appellants submission that the letter dated 16.03.2015 could not be considered as an encumbrance on the property in question. The said property had not been mortgaged or charged, and no lien was created over it. No Court of law had passed an order of restraint against its transfer. With the transfer of the property to the appellant, no pre-existing liability fastened to, or attached to the property was transferred to Respondent No.1.

26. The appellant may have opposed the respondent No.1's writ petition as it was entitled to it in law. Had the situation not undergone the fundamental change, as aforesaid, and the title of the respondent No.1/ writ petitioner could not be perfected by release of the registered Sale Certificate/ Deed, most certainly, the respondent No.1 would have had a valid reason and would have been entitled to the relief as granted to her by the learned Single Judge. Pertinently, it was the appellant which moved this Court by filing W.P.(C.) No.11662/2019 to assail the letter dated 16.03.2015 issued by the EOW to the Sub-Registrar of Assurances and the respondent No.1/ writ petitioner did not take steps in that regard. Even she could have done so. Therefore, it cannot be said that the appellant bank did not take steps to aid the release of the Title Deed of the respondent No.1 from the Sub-Registrar of Assurances.

27. It is clear to us that the respondent No.1 has undergone a change of mind with passage of time, since the property was auctioned in August 2017 and it could well be that the property prices today have fallen when compared to the time when the property was bought by the respondent No.1. Since it is now open to the respondent No.1 to proceed to obtain the registered Sale Certificate/ Deed, in our view, it is no longer open to the respondent No.1 to insist that she should be refunded the amount, having purchased the same in public auction under the SARFAESI Act. The Sale Certificate/ Deed has already been registered and the transaction is complete. The same cannot be reversed in the light of the changed scenario, and there is no justification for its cancellation. The Respondent No.1 was equally responsible for some inconvenience that she may have suffered in

not being able to get her hands on the registered Sale Certificate/ Deed.

28. Consequently, we are inclined to allow this appeal and set aside the impugned judgment, primarily on account of the fundamentally changed fact scenario. At the same time, we uphold the reasoning of the learned Single Judge, which is no longer attracted in the changed circumstances of the case. The parties are left to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

JANUARY 14, 2021
B.S. Rohella