15.07.2022
Court No.32
rpan/08

FMA 1277 of 2018
with
IA No.: CAN 1 of 2017 (Old No. CAN 9216 of 2017)
The Central Bank of India & Others
- Versus -
Sri Srikanta Mahaldar

Mr. Bishwambher Jha
... for the Appellants.
Mr. Subhabrata Basu,
Mr. Shovan Banerjee,
Ms. Urvashi Jain
... Respondent.

The present appeal has been preferred by the Central Bank of India [in short, the bank] and its functionaries challenging an order dated 13th July, 2017 passed in a writ petition, being WP No.7478 (W) of 2016.

Shorn of unnecessary details the facts are that responding to a public notice, published in the Times of India on 15th February, 2013, the writ petitioner/respondent participated in the auction sale pertaining to a property described under Sl. No.6 in the auction sale notice. On the basis of the said notice, the respondent paid an amount of Rs.1,80,607/- to the bank through a bank draft on 11th March, 2013. The respondent emerged to be the successful bidder and paid a further amount of Rs.2,70,000/- on 25th March, 2013 and lastly, an amount of Rs.13,50,000/- on 3rd April, 2013. In total, the respondent thus paid an amount of Rs.18,00,607/- to the bank. Thereafter, the bank issued a sale certificate. However, physical possession of the property was not handed over to the respondent. A complaint to that effect was lodged on 19th November, 2015. Further reminders were issued but the bank neither did refund the amount already paid nor did it hand over the possession of the property. Aggrieved thereby, the respondent preferred the writ petition in which the order impugned in the present appeal was passed.

Drawing our attention to the auction sale notice, Mr. Jha, learned advocate appearing for the appellants submits that the property was sold to the respondent on '*as is where is basis'* and *'as is what is basis'* & *'whatever there is basis'* & *'without recourse basis'*. In the said notice it was also stated that the bank is not responsible for title, condition or any other fact affecting the property. There was no rider to the effect that actual physical possession of the property shall be handed over to the respondent. Having agreed to such conditions, the respondent participated and as such he could not have refused to take over symbolic possession of the property from the bank. It was for the respondent himself to obtain physical possession of the property. No objection was also raised by the respondent during inspection.

He argues that the respondent is bound by the terms and conditions of the auction sale notice. In the sale certificate it was also stated that the property has been sold on *'as is where is basis'* and *'as is what is basis'*. The respondent refused to take over symbolic possession of the property from the bank and claimed refund. From such facts, it is explicit that no legal right of the respondent was infringed warranting interference of this Court.

As regards interest component imposed by the judgment, Mr. Jha submits that the benchmark guidelines, issued by the Reserve Bank of India, needs to be followed and that at best the respondent may claim an interest @ 9% p.a. In support of his arguments, Mr. Jha has placed reliance upon a judgment delivered in the case of *Union of India* Vs. *A. K. Mukherjee.*

Per contra, Mr. Basu, learned advocate appearing for the writ petitioner/respondent submits that the respondent had been misled by the bank. It was an obligation on the part of the bank to hand over the physical possession of the property after the respondent emerged to be the successful in the auction sale process. The bank had neither returned the amount of Rs.18,00,000/- nor had handed over the possession of the property to the respondent.

He argues that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short, the Act of 2002] and the Security Interest (Enforcement) Rules, 2002 [in short, the said Rules] were not followed by the said bank and as such, the learned Single Judge rightly directed the bank to refund the amount of Rs.18,00,000/- along with interest @ 18% p.a. on and from 11th March, 2013.

A successful bidder of the secured asset under public auction has to pay the sale consideration as per the timelines under Rule 9(3) and 9(4) of the said Rules. In the instant case, in spite of receipt of the entire amount, the bank withheld delivery of the possession. A duty is cast upon the authorised officer of the secured creditor to disclose to the auction purchaser any material defect in the title, failing which it would be construed that the purchaser was misled. If a secured creditor fails to disclose any such defect relating to the auction property, it cannot later claim protection on the pretext of '*as is where is basis*' and '*as is what is basis*'. The sale certificate, as issued, is also not in consonance with the terms, as incorporated under Appendix – V Rule 9(6) of the said Rules. The judgment delivered in the case of *A. K. Mukherjee* (supra), as relied upon by Mr. Jha, is, in our opinion, distinguishable on facts and has no manner of application in the present case.

In view thereof, we do not find any infirmity in the direction upon the bank to refund an of Rs.18,00,000/- to the respondent.

Pursuant to our earlier order, today, Mr. Sachin Kumar, Chief Manager, Regional Officer, Kolkata, South Region, Central Bank of India is personally present along with four bank drafts of Rs.4,50,000/- each, aggregating an amount of Rs.18,00,000/-. The respondent is also present today before this Court. The learned advocate-on-record has identified the respondent and he has also placed the original Aadhaar Card, the PAN Card as well as the Pension Payment Order booklet of the respondent. The originals are returned and the photocopies of the said documents are kept on record.

Mr. Sachin Kumar, Chief Manager, Regional Officer, Kolkata, South Region, Central Bank of India has handed over four bank drafts to the respondent in court today. The respondent has also issued a receipt to Mr. Kumar. Let the photocopies of the bank drafts and the receipt be kept on record.

It appears from the records that though the appeal was filed on 31st August, 2017 along with an application for stay, no steps were taken by the bank to have the matter heard expeditiously. In the affidavit-in-reply, filed on behalf of the bank, it has been disclosed that out of the sale proceeds paid by the respondent, an amount of Rs.12,40,583/- was utilized for the closure of the underlying credit facility and the rest amount of Rs.5,59,417/- was returned to the borrower, namely, Mr. A. K. Paul on 20th November, 2013. Even after returning an amount of Rs.5,59,417/- to the previous borrower, the bank is taking a stand that it was having symbolic possession. The bank illegally withheld the amount of

Rs.18,00,000/-, as paid by the respondent in the month of March, 2013. Repeated representations were submitted by the respondent thereafter but the bank did not bother to respond such representations and as such, the respondent was constrained to file the writ petition in the year 2016. Today, we are in the year 2022 and the respondent has not yet got back the said amount of Rs.18,00,000/-. The liability in relation to the sum had arisen out of a commercial transaction. The bank had utilized the amount of Rs.18,00,000/- paid by the respondent since the year 2013. The reduction of the rate of interest, as prayed for on behalf of the appellants, will amount to giving a premium to those, who trade upon the money of others. In view thereof, we are of the opinion that the learned Single Judge has rightly directed the bank to pay an interest at the rate of 18% per annum and we do not find any reason to interfere with such direction.

The appeal and the stay application are, accordingly, dismissed.

The personal appearance of the Chief Manager of the said bank is dispensed with.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)