HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-2252-2022 (O&M)

Reserved on: 08.02.2022

Pronounced on: 22.02.2022

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M/s Beyond Imagination ... Petitioner

VS.

Bank of Baroda ... Respondent

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Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice H.S. Madaan

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Present: Mr. Ashwani Talwar, Advocate for the petitioner

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M.S. Ramachandra Rao, J.

In this Writ Petition, the petitioner has challenged the e-auction notice dt. 06.01.2022 (P17) and the auction held on 29.01.2022 pursuant thereto in which immovable property of the petitioner measuring 1542 sq.yards situated at Kabul Singh, Babail Road, Panipat has been auctioned for Rs.1.72 crores by the respondent.

The petitioner is a proprietary concern engaged in the manufacturing and trading of home textile items like rugs, mats, curtains, cushions, bed covers. etc. The petitioner-unit is located in the above-referred property which is owned by the petitioner.

A loan was sanctioned to the petitioner by erstwhile Dena Bank of Rs.2.76 crores.

Since the petitioner could not pay the loan instalments, the loan account of the petitioner was declared as NPA on 24.04.2015. On the same day, a notice under Section 13(2) of the SARFAESI Act, 2002 was issued to the petitioner by the respondent claiming Rs.2,53,21,322/-.

Later a notice under Section 13(4) of the Act was also issued on 03.09.2015 taking symbolic possession of the property mortgaged by the petitioner with the Bank.

The petitioner and his family members filed SA Nos.217, 226, 227 of 2015 before the DRT which were, however, dismissed in 2015.

The District Magistrate, Panipat passed orders on 17.01.2017 under Section 14 of the Act taking possession of the mortgaged property.

The Dena Bank got merged with the respondent Bank.

The petitioner approached the respondent-Bank on 22.10.2020 with a request to settle the loan account under the OTS.

Alleging that the Bank did not respond to the petitioner's representation, the petitioner filed CWP-18874-2020 before this Court praying the respondents to consider and accept its OTS offer dt. 22.10.2020. It was also contended in the said Writ Petition that the order dt. 17.01.2017 passed by the District Magistrate, Panipat be also quashed.

The said Writ Petition was dismissed on 09.11.2020 by a Division Bench of this Court observing that from 2015 till the date of hearing of the Writ Petition, no payment was made of the defaulted amount which was about Rs.3,21,81,150/- as on 24.04.2015; and the petitioner also made a lot of efforts to delay the taking over of possession by the respondent-Bank. It was observed that the petitioners had challenged the proceedings under Section 13 before the DRT and the SAs were dismissed and the said orders had attained finality and at this stage, it was not open to the petitioner to raise a contention that the respondent was trying to take possession of the properties not mentioned in the demand notice. It was held that the petitioners had a remedy before the DRT to challenge the order dt. 17.01.2017 issued by the District Magistrate under Section 14 of the Act but the Writ petitioners did not choose to avail the said remedy for more than 3 years. It was further held that the offer letters by the petitioner were given only to buy time and there was no genuine attempt as such made to clear the dues of the defaulted amount; that the petitioner had indulged in the abuse of process of law; and therefore, no case was made out for interference in the writ jurisdiction. The said Writ Petition was thus dismissed with costs of Rs.50,000/-.

Thereafter, the petitioner again gave a request letter dt. 23.12.2020 to the respondent for entering into a compromise. The respondent accepted it for a total amount of Rs.3.61 crores subject to payment of Rs.1.50 Crores with the branch in a No Lien Account; deposit Rs.1.50 Crores before 25.03.2021 and the balance amount of Rs.0.61 Crores by 25.04.2021. It was also stipulated that any default of the terms and conditions of the letter dt.31.12.2020 (P4), would be treated as default which would result in termination of the sanction, automatically and the Bank will proceed to recover its dues through appropriate legal action without any further notice to the petitioner. It was stated that any amount deposited till the time will be adjusted towards the dues and shall not be refunded.

The petitioner made payment of the first installment of Rs.1.5 Crore and gave post-dated cheques for Rs.1.50 Crore bearing dt. 25.03.2021 and for Rs.61 lakhs bearing dt. 25.04.2021.

On account of Covid-19 pandemic and on account of death of some family members of the prospective purchaser of one of the items of the properties, the petitioner states that he could not arrange the balance amount.

The petitioner then gave a letter on 19.03.2021 for extension of time limit for deposit of Rs.2.11 Crores upto 31.07.2021, but the same was rejected on 24.03.2021 by the respondent-Bank and the petitioner was directed to deposit the second installment of Rs.1.50 Crore by 25.03.2021 and the remaining amount of Rs.60 lakhs by 25.04.2021.

The petitioner did not comply with the said deposits and vide letter dt. 31.03.2021 (P9), the Bank informed the petitioner that on account of the said non-compliance of the terms and conditions of the sanctioned OTS, it got frustrated and the petitioner should pay dues to avoid legal action. The Bank then issued notice dt. 29.01.2021 for e-auction of the above-referred property on 22.10.2021.

The petitioner then filed CWP-20833-2021 in this Court praying to set aside the said auction notice. In that Writ Petition, the petitioner was asked to deposit on 12.10.2021, Rs.20 lakhs over and above the bid/reserve amount of Rs.2,12,00,000/-.

The petitioner filed the affidavit on 13.10.2021 postponing the first deposit with an offer of a paltry amount of Rs.10 lakhs on 10.11.2021 and another installment of Rs.20 lakhs to 22.12.2021 and the balance amount was proposed to be paid on 28.02.2022.

The Division Bench, therefore, doubted the *bona fides* of the petitioner. It referred to the observations made by the earlier Division Bench in CWP-18874-2020 that the petitioner lacked *bona fides*. It noted that the petitioner had entered into an agreement with a third party on 04.09.2021 and had even received Rs.10 lakhs as advance but the said amount was not deposited immediately with the Bank. It also observed that when the Bank was fair enough to release one of the properties on an earlier occasion after receiving the first instalment of OTS of Rs.1.5 Crores, it cannot be criticized for putting the property to auction when the rest of the amount was not paid. It thus dismissed the Writ Petition on 14.12.2020.

In the instant Writ Petition, the petitioner contends that the above-mentioned property was put to auction on 08.12.2021 with the reserve price of Rs.1.72 Crores, but it failed because no bidder came forward; that it was again put to auction on 29.01.2022 with a reserve price of Rs.1,71,90,000/-, but 15 days' advance notice in accordance with Rule 9 of the Security Interests (Enforcement) Rules, 2002 was not served on the petitioner, and as such the petitioner was not able to exercise his right of redemption contained in Section 60 of the Transfer of Property Act and Section 13(8) of the 2002 Act.

This contention of the petitioner cannot be accepted because after the e-auction was issued on 06.01.2022 fixing the auction as 29.01.2022, the petitioner himself gave a letter on 28.01.2022, one day before the auction; but in the said letter, he did not contend that he received e-auction notice dt. 06.01.2022, less than 15 days before the date of auction. Also nothing prevented the petitioner from bringing the bidders to participate in the auction.

We are constrained to observe that more than once the petitioner had been given opportunities to clear the loan. Inspite of the

OTS being offered to him, he did not comply with the terms of the same. Every time, when there is an auction proposed to be conducted, the petitioner is approaching the bank with a fresh offer for OTS and on the pretext that the Bank is not considering the same, he is approaching this Court and is trying to stall the recovery of the loan amount. Twice, this Court had given a finding that the petitioner's conduct was not *bona fide*. We therefore cannot accept the offers being made at this stage by the petitioner as it is doubtful that he would keep up his promises, having regard to his past conduct.

In these circumstances, we do not propose to grant any relief to the Writ petitioner. Therefore, we do not find any merit in this Writ Petition and the same is accordingly dismissed.

No costs.

(M.S. Ramachandra Rao)
Judge

22.02.2022
Vvishal

(H.S. Madaan)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*