

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

114

CWP-11502-2022

Date of decision: 26.05.2022

M/S MULAKH RAJ AND SONS

.... Petitioner

Versus

SBI AND OTHERS

.... Respondents

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE H. S. MADAAN**

Present : Mr. Peeyush Gagneja, Advocate for the petitioner.

Mr. Rakesh Gupta, Advocate for the respondents.

M.S. RAMACHANDRA RAO, J. (oral)

Heard both the counsel for the parties.

Petitioner is the highest bidder in an auction conducted by the respondents of the commercial plot at Jallalabad on 09.12.2021. The petitioner had admittedly deposited the sum of ₹29,60,000/- constituting 25% of the bid amount and was given time till 24.12.2021 initially to make balance payment. There was some difficulty faced by the respondents in obtaining demarcation of the plot on account of a strike by the revenue department officials, and the respondents extended time for making deposit of the balance sale consideration from 24.12.2021 till 08.01.2022, and from 08.01.2022 till 23.01.2022, and from 23.01.2022 to 08.02.2022, and from 08.02.2022 till 09.03.2022.

In the meantime, the petitioner was insisting for demarcation to be done by the respondents and ultimately, they addressed an email dt.

09.03.2022 (P9) demanding delivery of physical possession *before* full and

final payment stating that the full payment was ready with them. They did not, however, make the full payment before 09.03.2022. The 90 days period for payment for full bid amount which is extendable under Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 does not permit grant of any further extension by the respondents for deposit of the balance sale consideration. Therefore, they were constrained to cancel the auction and refund the money deposited by the petitioner without forfeiting any amount.

Counsel for the petitioner contends that it was the duty of the respondents to have the demarcation done before the sale, and even if there was any difficulty at that point of time, they should have granted further time for making payment of balance sale consideration. Since, it is the respondents fault that the demarcation was not done, therefore, the petitioner cannot be compelled to make full payment without the land being demarcated.

The counsel for the respondents refuted the said contention and states that on account of situation beyond the control of the respondents demarcation could not be done before 09.03.2022, and since the petitioner did not deposit the entire sale consideration by that time, the respondents had no choice but to cancel the sale since they had no power under the Rules to extend the time for payment beyond 90 days from the date of sale. He also pointed out that in the letter (P9) addressed by the petitioner to the respondents they have insisted that physical possession of the property should be given before full and final payment which is contrary to the terms of the auction.

Admittedly, as per the terms of the auction, the full sale consideration had to be paid within the time prescribed by the Rules which

was initially by 24.12.2021 and which could not be extended beyond 09.03.2022 when the three months period expired from the date of the sale as per Rule 9(4) of the Rules. Had the petitioner at least deposited the money before 09.03.2022 with a condition that without demarcation, the amount cannot be appropriated towards sale consideration, even if there was some more delay in demarcation since they had complied with the conditions of the auction, the respondents can be compelled to execute the sale certificate in their favour as soon as demarcation is done.

Without paying the full amount on the last date i.e. 09.03.2022, the petitioner could not have insisted upon delivery of physical possession of the property.

We appreciate the fairness of the respondents in not forfeiting any amount deposited by the petitioner since obviously demarcation aspect could not be done due to circumstances beyond their control.

We are, therefore, of the opinion that the petitioner cannot complain of cancellation of the sale, having failed to comply with the terms of the auction by depositing entire bid amount within the 90 days period from the date of sale.

Accordingly, the Writ Petition is dismissed. No Costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(H. S. MADAAN)
JUDGE

May 26, 2022

Jyoti-IV