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

% **Date of decision: 15 FEBRUARY 2022**

\+ W.P.(C) 6022/2021

PALWINDER KUMAR KWATRA ..... Petitioner

Through: Mr. Alok Jagga with Mr. Chritarth Palli, Adv.

versus

CANARA BANK ..... Respondent

Through: Ms. Seema Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

<u>YASHWANT VARMA, J. (ORAL)</u>

1. This petition has been preferred challenging the orders of 22 April and 10 June 2021 passed by the respondent Financial Institution[1]. By the order of 22 April 2021, the respondent FI had proceeded to apprise the petitioner here that consequent to a failure on its part to pay the balance 15% of the reserve sale price in accordance with the timelines fixed under Rule 9(3) of the Security Interest (Enforcement) Rules, 2002[2], it had taken a decision to cancel the sale of the mortgaged property and to forfeit the earnest money deposited by the petitioner amounting to Rs. 41.80 lakhs. The communication further sets out the decision of the respondent to refund the amount of Rs. 62.75 lakhs which had been additionally deposited. The

[1] FI

[2] 2002 Rules

10 June 2021 order which is assailed, is in substance, a sale notice which had come to be issued in respect of the mortgaged property for which the petitioner had submitted a bid. For the purposes of disposal of the present writ petition the following essential facts would merit being noted.

2. The proceedings for the sale of the mortgaged property commenced pursuant to a notice issued on 26 February 2021. The reserve price which was fixed by the Bank was of Rs. 4,17,91,000/-. The date of the auction was fixed for 15 March 2021. The petitioner here submitted a bid of Rs. 4.18 crores and as per the terms of the sale notice deposited 10% of the bid amount amounting to Rs. 41.80 lakhs on 12 March 2021. This deposit represented the earnest money as required to be furnished in terms of the sale notice. In the e-auction which was conducted on 15 March 2021, the bid of the petitioner was found to be the highest and was ultimately accepted by the respondent Bank. The petitioner asserts that 15 and 16 March 2021 were closed on account of a bank holiday being the ensuing weekend. All banks and financial institutions are stated to have remained non-functional on account of a strike call given by the Employees Union. Resultantly banks did not function on 15 and 16 March 2021. These facts are not disputed by the FI.

3. Since the petitioner had already deposited 10% as earnest money, it was obliged to furnish the balance 15% of the total amount payable in terms of Rule 9(3) by the next working day which undisputedly was 17 March 2021. The petitioner contends that on account of the Covid-19 pandemic which broke out across the country, it's statutory obligation came to be seriously impeded. It is submitted that various monies which were expected

by the petitioner also could not reach them and came to credited only on 20 March 2021. Resultantly, the petitioner was able to deposit a sum of Rs. 30 lakhs only on 17 March 2021. The balance amount of Rs. 32,75,000/- which was payable on 17 March 2021 was ultimately deposited on 18 March 2021. It is this default of one day which forms and constitutes the basis for the impugned action of the respondent Bank.

4. When the writ petition was initially entertained, a learned Judge on 25 June 2021, taking note of the submissions advanced, had by a detailed order provided that the respondents would maintain status quo with respect to the property in question.

5. Upon exchange of pleadings and when this writ petition was taken up for final disposal, a preliminary objection was raised by Ms. Gupta, learned counsel appearing for the respondent Bank, who contends that the jurisdiction of the Court under Article 226 of the Constitution could not have been invoked till such time as the petitioner had availed of the alternative remedy as embodied in Section 17 of the SARFAESI Act. It was her submission that it is well settled in law that the mandate of Section 17 cannot be short circuited, and the jurisdiction of the Court under Article 226 of the Constitution invoked directly.

6. The Court finds itself unconvinced by this submission bearing in mind that the Court had by way of the original interim order entertained the petition and directed parties to exchange pleadings. In any case, once pleadings have come to be exchanged, it would be inequitable to relegate the petitioner at this stage to pursue the alternative remedy.

7. Additionally, Ms. Gupta, learned counsel has drawn the attention of the Court to the imperative language employed in Rule 9(3) to contend that the petitioner upon acceptance of the bid, was obliged to make a deposit of 25% of the amount of the sale price either on the same day or in any case by the next working day falling immediately after the sale had come to be confirmed in favour of a particular entity. Ms. Gupta refers to the admission of the petitioner that on 17 March 2021, that it did not have the requisite funds and was unable to deposit the entire sum of Rs. 62.75 lakhs which was mandated in terms of the provisions comprised in Rule 9(3) of the 2002 Rules. It was submitted that in light of the admitted default which was committed by the petitioner, the FI was well within its rights to forfeit the earnest money which was deposited.

8. Mr. Jagga, learned counsel appearing on behalf of the petitioner on the other hand submits that the action as initiated by the respondent is wholly arbitrary and has been resorted to without bearing in mind the unprecedented situation which came to prevail on account of the Covid-19 outbreak. It was submitted that the situation which came to prevail consequent to the breakout of the pandemic, constricted the petitioner from ensuring effective compliance with the provisions enshrined in Rule 9(3). Mr. Jagga further submits that as would be evident from a perusal of Rule 9(4), the FI is conferred the discretion to enter into an arrangement with the successful bidder for payment of the entire sale amount within such time as may be agreed upon subject of course to the rider that the agreed period should not exceed three months. It was submitted that the delay of one day which has been caused for reasons beyond the control of the petitioner

cannot be viewed as one meriting the petitioner facing the specte**r** of forfeiture of the earnest money deposited and for the entire process of the auction being annulled. In support of his submissions, Mr. Jagga has placed reliance upon a judgment rendered by a learned Judge of the Court in **Sanjay Kumar Vs. Central Bank of India** [W.P.(C) 3067/2020]. It is these rival submissions which fall for consideration.

9. At the outset, it would be apposite to note that sub rule (3) of Rule 9 in imperative terms requires a deposit of 25% being made either on the date when the auction is confirmed in favour of the successful bidder or in any case by the next working day. This is evident from the particular rule employing the expression "*not later than…*". Viewed in that light it is evident that sub rule (3) stands on a pedestal which is distinct and different from sub rule (4). Notwithstanding the above, the question which arises for consideration is whether the delay of one day is liable to be viewed as being determinative of the right of the petitioner to seek the opportunity to deposit the entire amount as was bid and to face the consequences of forfeiture as envisaged in Rule 9 in light of the peculiar circumstances which prevailed.

10. In the considered view of this Court while it is true that the statute does mandate and envisage the deposit being made in accordance with the provisions made in sub rule (3), this Court cannot shut its eyes to the unprecedented situation which came to prevail on account of the pandemic outbreak in March 2021. The situation which arose and befell the entire nation, nay the global community as a whole, was one which perhaps has no parallel in modern history. Even when this Court takes up the petition today, it is not unmindful of the fact that the nation as a whole has

commenced its journey on the path to recovery and that families, enterprises and businesses are in the process of resurrecting themselves after the third wave of Covid-19. It is in the aforesaid backdrop that the Court is compelled to evaluate the merits of the contention of the petitioner.

11. It also bears in mind the following pertinent observations as entered by the learned Judge in **Sanjay Kumar: -**

> "12. In my view, these are undoubtedly extraordinary times that we are living in. Out of all the sectors of the economy bearing the weight of this pandemic, the banking sector has been one of the hardest hit. The Reserve Bank of India, the apex financial institution of the country, remains cognisant of the consequences of this pandemic upon individual households and institutional borrowers as also their struggle to make timely payments. In order to minimise the effect of the pandemic and to alleviate the hardships faced by all kinds of borrowers, it has granted a ninety day long moratorium on payments and issued numerous circulars laying down guidelines for the banking and finance sectors. The Courts have also kept up with these circumstances by taking the effect of the national lockdown into account while dispensing justice. In recent cases, the Supreme Court as well as the High Courts have weighed in the prevalent circumstances while exercising their discretionary powers to assuage the concerns and hardships of enterprises and persons. Today, there is a clear and urgent need for the Courts to dispense justice with equity. In fact, the Courts have taken suo moto cognisance of the difficulties triggered by the pandemic while granting reliefs, as evident from the decision of the Supreme Court in In Re: Cognizance for Extension of Limitation S.M.W.P (C) No. 3/2020 on 23.03.2020.
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> 13. Against this backdrop and in the facts of the present case, the petitioner has convinced this court that the delay occasioned was bonafide, unintentional and a result of the chaos brought on by the announcement of the national lockdown. While condoning the delay, I am cognisant of the fact that in principle and statute, the deadlines prescribed in banking and financial laws require strict interpretation. However, in view of the delay in question only being of 5 days, which cannot be deemed as inordinate, and the exceptional nature of prevailing circumstances, I am of the view that the delay deserves to be condoned. In any event, the Bank also does not seriously object to the prayer for condonation of the five-day delay period in depositing the amount. Even otherwise, the applications under the SARFAESI Act pending before the Tribunal and pertaining to the

> auction property, were not filed until 17th April 2020, which was 11 days *after* the petitioner had already deposited the remaining amount with the Bank. Thus, the auction being challenged before the Tribunal cannot also be a valid ground to reject the petitioner's prayer for condonation of delay. Even the decision of the Division Bench dated 24.04.2020 clarifies that the deposit made by the persons challenging the auction shall neither create any equities nor create any fresh rights in their favour. Therefore, the delay of five days occasioned by the petitioner in depositing the remaining amount to the Bank stands condoned."

12. It becomes pertinent to note that in **Sanjay Kumar** the learned Judge found it expedient to condone the delay of five days as distinct from the facts which obtain in the present writ petition and evidence a default of 24 hours having been committed.

13. The Court also bears in mind the stand of the respondent Bank which seeks to ensure expeditious recovery of its dues. It is important to note that the respondent is undisputedly a public financial institution. Its interest would be clearly subserved if the controversy which forms the subject matter of the present writ petition is brought to a close and the petitioner called upon to furnish the balance amount constituting the bid which was submitted and the controversy consequently lent a hiatus. This would clearly balance the interest of the petitioner as well as the public financial institution. Regard must also be had to the fact that it is not the case of the FI that today, it would be in a position to fetch more than the bid submitted by the petitioner. In fact the tenor of the submissions addressed on its behalf was of closure being accorded without being bound by the peculiar and singular facts of this case being treated as a precedent.

14. While the Court is conscious of the mandate of the particular statute, it must remain cognizant of the peculiar situation which came to prevail and

constrained courts to even stop the march of the statute of limitation. These were times without parallel and require the Courts to formulate novel solutions in equity and to undertake an exercise to balance the interest of parties.

15. Upon the query of the Court Mr. Jagga, on instructions states that the entire balance amount which is liable to be paid by the petitioner in terms of the bid which was submitted and duly accepted shall be deposited not later than within a week from today. Taking into consideration the fact that there has been an admitted default, the interest of parties would be balanced if the petitioner is further held liable to pay simple interest on the balance amount @ 5% from 17 March 2021 till such time as the entire remainder amount is deposited with the respondent Bank.

16. Accordingly, and for the reasons aforenoted, the writ petition shall consequently stand allowed in the following terms. The order dated 22 April 2021 of forfeiture of the earnest money deposited by the petitioner as well as the subsequent sale notice of 10 June 2021are hereby quashed. The petitioner is directed to deposit the entire balance amount as per the original bid submitted and duly accepted by the respondents within a period of one week from today together with simple interest thereon @ 5% to commence from 17 March 2021 and to run till the deposit is ultimately made.

17. The right of the FI to petition this Court shall stand preserved in the eventuality that the petitioner fails to adhere to the commitment proferred and noted above.

18. The writ petition is disposed of accordingly.

YASHWANT VARMA, J.

FEBRUARY 15, 2022
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