

Form No. J.(2)
Item No.1

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 29.09.2023

DELIVERED ON: 29.09.2023

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**I.A. No. CAN 2 of 2023
In.
F.M.A. 461 of 2023**

**The General Manager, Punjab National
Bank, Zonal Sastra Office & Ors.
Vs.
Milan Changdar**

Appearance:-

Mr. Ranajit ChowdhuryFor the Appellants

Mr. Mani Sankar ChattopadhyayFor the Respondent

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the appellants/bank is directed against the order dated 20th February, 2023 in W.P.A. No.4097 of 2023. The said writ petition was filed by the respondent/borrower praying for a direction upon the appellants/bank to permit the respondent to deposit the balance

amount in terms of the agreement entered into between the writ petitioner and the bank for purchase of a property. The learned Single Bench did not grant the relief sought for by the petitioner by pointing out that three months expired on 10th November, 2022 since the confirmation of sale was on 8th August, 2022 and hence any extension given by the writ petitioner would be against the 2002 Rules. However, the appellants/bank was granted liberty to resale the property under Rule 9(5) of the said Rules and also taking note of the financial constraints of the respondent/writ petitioner, the appellants/bank was directed to return the payment already made of Rs. 1.34 crores to the respondent/writ petitioner within a time frame.

2. Aggrieved by such portion of the order passed in the writ petition, the appellants/bank has filed the present appeal.
3. We have elaborately heard the learned advocates for the parties. The first and foremost objection raised by the appellants/bank is as regards the maintainability of the writ petition. This issue has been well-settled by several decisions of the Hon'ble Supreme Court and it would be beneficial to refer to one such decision in the case of **Agarwal Tracom Private Limited v. Punjab National Bank & Ors.** reported in **(2018) 1 SCC 626**, wherein the Hon'ble Supreme Court held that the writ petition by the auction-purchaser challenging forfeiture of the deposit money by the secured creditor is not maintainable as the auction-purchaser has to avail the alternate remedy provided under the SARFAESI Act. The said decision will be squarely applicable to the facts of the present case. In this context, we may also refer to the very recent decision of the Hon'ble Supreme Court

in **Authorised Officer, State Bank of India v. C. Natarajan & Anr.** reported in **2023 SCC OnLine SC 510**.

4. According to the appellants/bank, the amount has already been forfeited. According to the respondent/writ petitioner, the same could not have been done because the time limit has not expired. In any event, these are all factual issues, which are being disputed by the appellants/bank and therefore, it is but appropriate for the respondent/writ petitioner to avail the alternate remedy provided under the provisions of the SARFAESI Act.
5. Therefore, in our view, a direction could not have been issued in the writ petition to return the amount of Rs. 1.34 crores to the respondent/writ petitioner.
6. For the above reasons, the appeal is allowed and that portion of the order passed by the learned Single Bench directing return of the payment already made by the respondent/writ petitioner to the tune of Rs. 1.34 crores is set aside and the respondent/writ petitioner is granted liberty to avail the alternate remedy provided under the provisions of the SARFAESI Act.
7. If such application is filed before the Debts Recovery Tribunal or any other forum within a period of 45 days from the date of receipt of the server copy of this order, the said application shall be entertained without reference to limitation.
8. We make it clear that the merits of the matter have not been gone into and the respondent/writ petitioner would be entitled to raise all factual and legal issues before the appropriate forum.
9. With the above observations, the appeal stands allowed to the extent indicated. Consequently, I.A. No. CAN 2 of 2023 is disposed of.

10. There shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree,

(HIRANMAY BHATTACHARYYA, J.)

Pallab/A.N. AR(Ct.)