27.09.2023
Sl no. 40
Ct no. 2
P.M.

WPA 20443 OF 2021

Anand Shaw
- Vs -
State Bank of India & Anr.

Mr. Kamalesh Jha,
Ms. Srabani Biswas
... for the petitioner

Mr. Swarup Banerjee,
Mr. H. C. Yadav
... for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has prayed for cancellation of auction sale held on 26th September, 2014 by filing this writ petition on 14th December, 2021 which is almost after expiry of more than seven years from the date of such auction and further has prayed for refund of the earnest money with interest. Petitioner was a successful bidder in the auction held by the respondent bank.

Mr. Banerjee, learned advocate appearing for the respondent Bank in opposing this writ petition submits that as per Section 9(3) of the Security Interest (Enforcement) Rules 2002 a successful bidder has to make a deposit of 25% of the amount of sale with includes earnest money and further balance sum is to be deposited by the successful bidder on or before 15 day of confirmation of sale of the immovable property in question which petitioner has failed to comply.

Learned advocate appearing for the petitioner submits that there was a stay of the sale proceeding by a suit filed by the borrower and because of the said stay it is the case of the petitioner that petitioner could not make deposit of the balance amount.

It appears from record that respondent bank has intimated the petitioner by its letter dated 24th January, 2017 that the stay on sale was already vacated and thereafter respondent bank wrote another letter on 24th January, 2017 to make the balance payments to complete the sale transaction. Yet the petitioner did not make any payment of balance sum of sale and contending that the petitioner was to pay the balance amount only on confirmation on or before 15th day of confirmation of the sale of the immovable property in question and since the sale in question was allegedly not confirmed he was not bound to pay the balance amount. Had the petitioner been aggrieved by the action of the respondent bank that it was not completing the same he could have approached the Court of law for asking the bank to complete the sale.

It is the defence of the petitioner for non-depositing of the balance amount for non completion of the sale but the petitioner who has chosen not to approach any Court of law, the respondent bank took the action of forfeiture of the earnest money as per the aforesaid provisions of law.

Undisputed fact remains that money in question was forfeited and this action of forfeiture was intimated to the petitioner on 24th January, 2017 rightly or wrongly but for that claim petitioner filed this writ petition in December, 2021 that is almost after six years and petitioner is asking for cancellation of auction sale held in September, 2014 that is after more than six year filed this writ petition in 2021.

Mr. Banerjee, learned advocate appearing for the respondent apart from relying on the aforesaid provisions of law also relied on a judgement of the Hon'ble Supreme Court dated 10th April, 2023 in the case of Authorised Officer State Bank of India – Vs – C. Natarajan & Anr. reported in (2023) 5 S.C.R. 1067 and particularly paragraph 34 and 35 of the said judgement which are quoted as hereunder :

"34. Yet again, in Indian Council for Enviro-Legal Action vs. Union of India, this Court held that a

person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust.

35. In the light of guidance provided by the above decisions, what needs to be ascertained first is whether the Bank received or derived any benefit or advantage by forfeiture of 25% of the sale price. We do not think that the Bank has been enriched, much less unjustly enriched, by reason of the impugned forfeiture. Receipt of 25% of the sale price by the Bank from the contesting respondent was not the outcome of any private negotiation or arrangement between them. It was pursuant to a public auction, involving a process of offer and acceptance, and it was in terms of statutory provisions contained in the Rules, particularly rule 9(3), that money changed hands for a definite purpose. Receipt of 25% of the sale price does not constitute a benefit, a fortiori, retention thereof by forfeiture cannot be termed unjust or inequitable, so as to attract the doctrine of unjust enrichment. The Bank, as a secured creditor, is entitled in law to enforce the security interest and in the process to initiate all such steps and take all such measures for protection of public interest by recovering the public money, lent to a borrower and who has squandered it, in a manner *authorised by law. The contesting respondent participated in the auction well and truly aware of the risk of having 25% of the sale price forfeited in case of any default or failure on his part to make payment of the balance amount of the sale price. Question of the Bank being enriched by a forfeiture, which is in the nature of a statutory penalty, does not and cannot therefore arise in the circumstances."*

Considering the facts and circumstances of this case and submission of the parties and in view of discussion made above I find no merits in this writ petition being WPA 20443 of 2021 and accordingly the same is dismissed.

(Md. Nizamuddin, J.)