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WPO/1765/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

ELOQUENT STEEL IRON PRIVATE LIMITED
VS
UNION BANK OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 18th December, 2023.

Appearance:
Mr. Rahul Karmakar, Adv.
Mr. Sounak Mukherjee, Adv.
Mr. Nishant Kr. Saraf, Adv.
. . .for the petitioner.

Mr. Sailesh Mishra, Adv.
. . .for the respondents.

The Court: Learned counsel for the petitioner contends that in a notice of an auction sale conducted by the respondent/bank, it was disclosed that all that part and parcel of Commercial Unit at Diamond Prestige, Room No. 703-A, 7th Floor, at 41A, Acharya Jagadish Chandra Bose Road (A.J.C. Bose Road), Kolkata 700017, having built up area 2313 square feet (super built up area 3084 square feet) with right to park 1(one) number of car in the lower basement bearing no. 043 and 1 (one) number of car in the upper basement bearing no. 028 belonging to the borrower was put up for sale.

In the 'Encumbrance' column, it was mentioned that no encumbrance was known to the AO (Authorised Officer), apart from a claim of Rs.4,46,747/- as on November 9, 2021, which was outstanding dues of maintenance and electricity charges from an entity mentioned therein.

However, when the sale certificate was issued in favour of the petitioner, pursuant to the petitioner depositing the entire consideration amount, it was discovered that only leasehold rights in the property had been severed in favour of the petitioner. It is argued that the same was palpably contrary to the sale notice of the bank. After having deposited the entire consideration amount pursuant to the sale notice, it is argued that it is incumbent upon the bank to sell the entire property. The auction sale notice itself gave the impression that the entire property was being sold to the petitioner. As such, the petitioner seeks a rectification of the sale certificate to the effect that the entire title in the property be transferred to the petitioner and not merely leasehold rights.

Learned counsel for the petitioner also relies on the relevant clauses of the parent deed executed in favour of the borrower, where not only the leasehold interest in the property was sold by the assignor but the entire ownership/reversion of the owner was also transferred in favour of the borrower.

Learned counsel appearing for the bank submits that in the auction notice itself, it was mentioned underneath that for detailed terms and conditions of the sale, the bid provided in the official portal of the bank is required to be looked into. Learned counsel hands over a printout of a document indicating that in the uploaded document in the said portal, it was categorically mentioned in several places that the leasehold rights in the property would only be sold.

However, it is also indicated that the bank has both the leasehold interest and the title in respect of the property and otherwise there is no difficulty, if directed by the Court, to execute any certificate of rectification.

A perusal of the auction notice clearly shows that the bank, in unambiguous terms, offered to sell the entire property, by indicating that no known encumbrance existed in respect of the property apart from a claim of a particular quantum of an amount in lieu of maintenance charges.

Although, in small print, it was stated at the bottom of the said notice that for detailed terms and conditions of the sale the link provided in the concerned website was required to be visited, visiting the said link was not mandatory, since the notice itself should have disclosed the entire content of the sale notice. Moreover, by way of a reference to a tertiary website/document, the principal terms of the auction sale notice cannot be altered.

Thus, what was put up by the bank for sale was the entire property including leasehold rights as well as title, as owned by the borrower himself, and which was the secured asset. Hence, the bank cannot resile from such position now and contend that it sold only the leasehold rights in the property to the petitioner.

In such view of the matter, the petitioner is entitled to a rectification of the sale certificate by the bank.

Accordingly, WPO 1765 of 2023 is allowed on contest, thereby directing the respondent no.1 bank to rectify the Sale Certificate dated August 11, 2022 executed in favour of the petitioner by incorporating the transfer of the complete ownership along with leasehold right in respect of the property-in-question. A fresh rectified sale certificate shall be issued accordingly by the bank at the earliest, positively within three weeks from date, in favour of the petitioner.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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