IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8434 OF 2022

Gaurav Dineshchandra Agrawal,
Aged about 40 years,
Occupation : Business, R/o Flat No.303,
Enrico Heights, Iris Towers, Adj. to
Raddison Blue Hotel, Vivekanand Nagar,
Wardha Road, Nagpur – 440015

.. **Petitioner**

Versus

1) Punjab National Bank,
Circle Satara Centre, PNB House,
Kingsway, Nagpur – 440001
through it's Authorised Officer
CS6795@pnb.co.in

2) Shri Ramkrishna s/o Govind Poddar
aged about : Major, Occu. : Business,
Resident of Near Day to Day,
Vaishnodevi Square, Wardhaman Nagar,
Nagpur

3) Shri Pankaj Agrawal,
Aged about : Major, Occu.: Business,
Plot No. 128, Lendra Park Ramdaspeth,
Nagpur – 440012

4) Reserve Bank of India,
Civil Lines, Nagpur
Through it's Legal Manager (Liasoning)

.. **Respondents**

Mr. M. Anilkumar, Advocate for petitioner.
Mr. M. Y. Wadodkar, Advocate for respondent 1.
Ms. Payal Kaware, Advocate for respondent 2.

CORAM	:	ROHIT B. DEO AND M. W. CHANDWANI JJ.
PRONOUNCED ON	:	04/07/2023

ORAL JUDGMENT : (PER : ROHIT B. DEO, J.)

Heard.

(2) The petitioner is seeking a Mandamus directing the respondent 1 – Punjab National Bank to accept the bid of the petitioner or in the alternate to conduct the auction of the property. The petitioner is further seeking a Mandamus directing respondent 1 – bank not to act in furtherance of the settlement before the Debt Recovery Tribunal (D.R.T.) dated 14/12/2022 and not to handover the possession of the property or to execute sale certificate in favour of respondent 2 – auction purchaser.

(3) The other relief sought is that guidelines be framed by respondent 4 – Reserve Bank of India to protect the auction purchasers and to initiate an enquiry against respondent 1 – bank.

(4) The factual matrix :-

4.1 Respondent 3 was extended financial assistance by the Oriental Bank of Commerce, which merged/amalgamated into/with respondent 1 – Punjab National Bank.

4.2 The financial assistance was inter alia secured by the mortgage of land admeasuring 5862 square meters situated in Dabha, Ring Road, Nagpur (secured asset).

4.3 The borrower committed default in repayment of financial assistance, with the result that the bank auctioned the secured asset on 11/03/2019.

4.4 One Mr. Rajeshkumar Babulal Jejani, approached the High Court in Writ Petition 3028 of 2019 challenging the e-auction dated 11/03/2019.

4.5 On 15/04/2019, the High Court directed that while proceeding of auction may go on, the sale certificate shall not be issued.

4.6 Mr.Ramkrishna s/o Govind Poddar – respondent 2 herein was the successful bidder. Mr. Poddar deposited an amount of Rs.67,00,000/- (Rupees Sixty Seven Lakhs only) within 15 days from the date of conducting the auction. Further an amount of Rs.1,00,00,000/- (Rupees One Crore only) and an amount of Rs.1,12,75,000/- (Rupees One Crore Twelve Lakhs Seventy Five Thousand only) was deposited by Mr.Poddar at a later stage.

4.7 The High Court noted in the order dated 10/07/2019 that the stand of the bank that the e-auction was not preponed and it was only the last date of submission of the bid which was preponed to 08/03/2019.

4.8 During the course of the proceedings, the High Court asked the parties to submit fresh offers in sealed cover. The High Court observed that the bank will be benefited, if e-auction is conducted. One interested bidder Mr.Fuke intervened and offer to purchase the secured asset for Rs.6,86,00,000/- (Rupees Six Crores Eighty Six Lakhs only) which was more than the price offered by Mr.Rajeshkumar s/o Babulal Jejani and respondent 2. The High Court directed the intervenor to deposit the bid amount in stipulated timeline.

4.9 On 20/02/2020, the petitioner and the intervenor told the High Court that the secured asset is encroached. Respondent 1 – bank disputed the statement that there is encroachment over the property. The High Court then noted that respondent 2 who was the highest bidder in the auction held on 11/03/2019 sought withdrawal from auction. Respondent 1 – bank expressed willingness to refund the amount deposited by respondent 2 subject to the condition that the petitioner is ready and willing to purchase the secured asset for Rs.6,86,00,000/- (Rupees Six Crores Eighty Six Lakhs only). The intervenor Mr.Fuke who had submitted the highest bid in the proceeding in the writ petition backed out. The High Court directed the petitioner Mr.Jejani to deposit 25% of the bid amount of Rs.6,86,00,000/- (Rupees Six Crores Eighty Six Lakhs only) within two days and the balance amount within 15 days.

4.10 The petition was then heard on 23/03/2021. The High Court was pleased to dismiss the petition reserving liberty with the petitioner Mr. Jejani to approach the D.R.T. under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

4.11 It appears that the respondent 2 – Mr.Poddar and respondent 1 – Punjab National Bank settled the inter se dispute before the D.R.T. Mr.Poddar agreed to deposit interest @9%p.a. on the balance amount.

4.12 It further appears that Mr.Jejani, who was the petitioner in Writ Petition 3028 of 2019 did not approach the D.R.T. under Section 17(1) and chose not to avail the liberty reserved by the High Court.

4.13 The petitioner did not participate in the e-auction. The petitioner did not intervene in Writ Petition 3028 of 2019, nor did he make an attempt to submit the bid in the proceedings in Writ Petition 3028 of 2019.

4.14 The petitioner claims that he is a businessman and he is interested in purchasing real estate. In paragraph 5 of the petition the petitioner candidly admits that he is a stranger to the entire transaction. However, petitioner claims to have obtained certain information from the official website of the High Court and the D.R.T.

4.15 The petitioner contends that he was interested in purchasing the property and in the second week of December 2022 sought inspection of the relevant documents, which the officers of the bank refused on the premise that the secured asset is to be auctioned on "AS IS AND WHERE IS BASIS".

4.16 The petitioner then contends that he could not get himself registered with the e-auction website on 15/12/2017. The petitioner admits that he was required to upload the KYC documents which he could not upload due to the paucity of time. The petitioner contends that he requested respondent 1 – bank to accept physical bid, which request was rejected.

4.17 The petitioner claims that it was only on 22/12/2022 that he came to know that the secured asset was purchased by respondent 2. The petitioner claims that he was ready to purchase the property on "AS IS AND WHERE IS BASIS" for Rs.9,38,00,000/- (Rupees Nine Crores Thirty Eight Lakhs only) and addressed communication dated 23/12/2022 to respondent 1 – bank by Registered Post Acknowledgement Due (R.P.A.D.).

4.18 The petitioner then makes an elaborate reference to the proceedings in Writ Petition 3028 of 2019. The petitioner admits that the writ petition came to be dismissed on 23/03/2021 and Mr.Jejani was relegated to the alternate statutory remedy.

4.19 The petitioner then refers the proceeding before the D.R.T. and then alleges that the secured asset is sold by respondent 1 – Punjab National Bank in favour of respondent 2 – Mr.Poddar in collusion and the bank has suffered loss of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only)

4.20 The petitioner then alleges that the proceedings before the D.R.T. and the High Court were collusive.

4.21 The petitioner then claims that he has right to purchase the secured asset under Article 300A of the Constitution of India.

4.22 It is not in dispute that the auction was held on 11/03/2019 and the sell was confirmed on 15/03/2019. The sale certificate was not registered in view of the interim order passed in Writ Petition 3028 of 2019. It is further not in dispute that the said writ petition was dismissed and the petitioner Mr.Jejani was granted leave to approach the D.R.T., which he did not avail. It is irrefutable that the petitioner did not participate either in the auction or then in proceedings in Writ Petition 3028 of 2019, which was disposed of on 23/03/2021.

(5) Apart from the fact that we found the challenge to the e-auction untenable, we repeatedly asked the learned counsel for the petitioner Mr.Anilkumar to satisfy us that the petitioner did have the locus. Mr.Anilkumar while fairly conceding the petitioner did not participate in the auction, nor did he intervene in the Writ Petition 3028 of 2019, insisted that since the petitioner has offered a higher price, the writ Court must interfere in order to ensure that the respondent 1 – bank is not put to loss.

(6) We note from the record that the only communication which the petitioner allegedly received to respondent

1 – Punjab National Bank is dated 23/12/2022. Surprisingly, the said communication states that the petitioner has come across an advertisement stating that the auction is scheduled on 07/11/2022. We may extract relevant portion of the said communication below :-

> *"We have come across the advertisement published in the newspapers regarding auction of the aforesaid property scheduled on 07.11.2022. We are interested in purchasing the said property.*
>
> *We however on preliminary due diligence approached you, as the borrower is a chronic defaulter, to give us inspection of the files to enable us to do due diligence in the matter, however the same was never provided.*
>
> *That we approached you and informed you that we are unable to register on the portal mstcecommerce.com on 16.12.2022 as we are informed that 3 days time would be required for registration and verification of KYC documents, however the bids are scheduled on 17.12.2022."*

6.1 We have already noted that the auction was held on 11/03/2019 and Writ Petition 3028 of 2019 was dismissed on 23/03/2021. The auction purchaser and the bank appear to have placed on record of the D.R.T. some settlement on 14/12/2022 and the petitioner contends that the D.R.T. appears to have disposed of the matter on 22/12/2022.

(7) In ***K. Kumara Gupta v. Sri Markendaya and Sri Omkareswara Swamy Temple and others, AIR 2022 SC 1220,*** the Hon'ble Supreme Court emphasized that merely because subsequent to the completion of the public auction a person expresses willingness to pay a higher amount, the auction and sale-deed could not have been nullified by the High Court.

(8) Similar, is the articulation in ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujrat) Limited and others, (2008) 9 SCC 299.***

(9) In ***Pegasus Assets Reconstruction P. Ltd. v. M/s. Haryana Concast Limited and Anr., AIR 2016 SC 494,*** the Hon'ble Supreme Court reiterated the articulation in ***Valji Khimji*** (supra).

(10) The lack of locus apart, we are satisfied that the intention of the petitioner does not appear bonafide. We note that in paragraph 3 of the petition unnecessary and unwarranted allegations are made against respondent 3 – borrower, which we extract below :-

> *" 3. .... The respondent No.3 is known for it's mischief and misconduct as he has been charged for various criminal offences and he has duped various*

banks in the past and respondent no.1 is the same. It is reliably learnt that the respondents no.2 and 3 are also related to each other and/or are very good family friends. ”

(11) The High Court has considered the challenge to the auction at the behest of Mr.Jejani, who did not avail the liberty to take recourse to the alternate statutory remedy.

(12) We are satisfied that the petitioner lacks bonafide and at any rate the locus and the present petition is gross abuse of the process of law.

(13) The petition is dismissed with costs of Rs.50,000/- (Rupees Fifty thousand only), which the petitioner shall deposit with the High Court Legal Aid Services Sub-Committee, Nagpur within the next two weeks.

(14) If the costs is not deposited the Registry shall take steps to recover the costs as arrears of land revenue.

[M. W. CHANDWANI J.] **[ROHIT B. DEO, J.]**

KOLHE
Digitally signed by RAVIKANT CHANDRAKANT KOLHE Signing Date:05.07.2023 19:14