



\$~42

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

% *Date of Decision: 26.07.2023*

+ **W.P.(C) 7507/2023**

GYANESHWAR AGGARWAL Petitioner

Through: Ms. Reena Jain Malhotra, Adv.

Versus

UNION BANK OF INDIA AND
ANR.

..... Respondents

Through: Mr. Harshit Anand, Adv. for Mr.
Shadan Farasat, ASC.

Mr. Shailendra Babbar & Mr.

Avinash Das, Advs. for Borrower.

Mr. Samarendra Kumar, Adv. for
R1.

Mr. Vivek Kumar, SI, Gandhi
Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*,
praying as under:-

“(a) Issue Appropriate Writ/Order/Direction to the
Respondent no. 1 to remove their waste articles/
goods from one room of the property of the
petitioner.

(b) Issue Appropriate Writ/Order/Direction to the
Respondent no. 2 to provide the police assistance
to the Respondent no. 1 to enable them to remove
their waste articles/goods from the one room of the
property of the Petitioner.”



2. The property in question (property bearing no. IX/158, area measuring 108 Sq. Yds. along with the whole of the structure with the full terrace rights, located at Krishna Market Gali, Subhash Road, Gandhi Nagar, Delhi-110031) was auctioned on 20.07.2022. This was pursuant to the steps taken by respondent no.1 (Union Bank of India – hereafter ‘the respondent bank’) for enforcement of its security interest in the said property, which was created for securing the repayment of the financial assistance provided by the bank to the sole proprietorship concern of Mr. Vipin Khurana. Although he is not party to the present petition, he is represented by Mr. Shailendra Babbar, advocate and the learned counsel has advanced submissions on behalf of Mr Vipin Khurana (the borrower). Although no formal application for impleadment was filed, he was duly heard.

3. The petitioner had participated in the said auction and was declared the highest bidder. His bid for a sum of ₹5,60,50,000/- (Rupees Five Crore Sixty Lacs & Fifty Thousand Only) was accepted. Admittedly, the petitioner deposited the entire consideration amounting to ₹5,60,50,000 /- within the stipulated period and the respondent bank issued the sale certificate on 31.08.2022. Thereafter, the respondent bank handed over possession of the property in question to the petitioner and also executed the registered Sale Deed in his favour.

4. The petitioner’s grievance stems from the fact that one room in the said property is not vacant and is stated to contain waste articles and certain machinery, which belongs to the borrower. The respondent bank has not removed the said articles and consequently, the petitioner is unable to take steps for developing the property in question.



5. There is no dispute that the property in question was sold to the petitioner and therefore, the petitioner is entitled to enjoy the benefit of the same. It is alleged that the borrower has been creating hindrances and preventing the petitioner from demolishing and redeveloping the said property in accordance with law. In the aforesaid circumstances, the petitioner has approached this Court.

6. The learned counsel appearing for the respondent bank also submits that the respondent bank has approached the concerned Magistrate for appropriate orders under Rule 14 of the Security Interest (Enforcement) Rules, 2002, for permitting the removal of the articles from the said room in the property, but no order has been passed as yet.

7. Mr. Shailendra Babbar, learned counsel who appears on behalf of the borrower – who is allegedly interfering with the petitioner’s possession of the property – submits that he has a serious challenge to the auction conducted by the respondent bank. He submits that a fraud has been played on the borrower (Mr. Vipin Khurana) by the respondent bank in collusion with certain other persons and the property in question was sold at a value less than its fair value. He submits that the borrower has filed a petition, WP(CRL) No.1255/2023, challenging the auction of the property in favour of the petitioner and the said petition is pending before another Bench of this Court.

8. Concededly, there is no order interdicting the auction sale of the property in favour of the petitioner. Further, no order has been passed by this Court granting any relief to Mr. Vipin Khurana. Clearly, he cannot interfere with the subject property till he establishes his right before any court of competent jurisdiction. It is also apparent that the



contention whether the fraud was played on Mr. Vipin Khurana or the auction is liable to be set aside, is highly disputed. However, this Court is not required to examine the said contention in these proceedings. Having noted, that there is no dispute that the property was auctioned and has been sold to the petitioner, we consider it apposite to allow the present petition

9. Mr. Vipin Khurana is granted three days' time from today to voluntarily remove waste articles from the said premises failing which the respondent bank shall take all necessary steps to remove the articles from the room in question and ensure that the hindrance free possession of the property is available to the petitioner. The concerned police authorities are also directed to ensure that there is no interference with the petitioner's possession of the property in question.

10. It is clarified that this order is subject to any order that may be passed in any other proceedings. In other words, if Mr. Vipin Khurana is successful in securing any order in the petition filed by him or any other proceedings, this order shall not come in the way of the implementation of the said order(s).

11. The petition is allowed in the aforesaid terms.

12. *Dasti* under the signature of the Court Master.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 26, 2023/Ch