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

\+ **W.P.(C) 9540/2022 and CM APPL. 28480/2022**

Date of Decision: **24.04.2023**

IN THE MATTER OF:

SEEMA SAHNI
W/o SH. GAURAV SAHNI,
R/o 461, 3RD FLOOR, KOHAT ENCLAVE,
PITAMPURA, NEW DELHI-110034

..... PETITIONER

Through: Mr. Shivanshu Bhardwaj, Advocate.

Versus

THE PUNJAB NATIONAL BANK
THROUGH THE CHIEF GENERAL MANAGER, PNB,
7, BHIKAJI KAMA PLACE, NEW DELHI- 1100607

..... RESPONDENT NO.1

M/S PUNJAB NATIONAL BANK,
(CIRCLE SASTRA CENTRE-WEST DELHI).
9/90, FIRST FLOOR, P-BLOCK,
CONNAUGHT CIRCUS,
NEW DELHI- 110001,
THROUGH ITS BRANCH MANAGER

..... RESPONDENT NO.2

SH. NEM KUMAR,
CIRCLE HEAD,
(AUTHORISED OFFICER, CIRCLE SASTRA CENTRE)
M/s PUNJAB NATIONAL BANK,
9/90, FIRST FLOOR, P-BLOCK,
CONNAUGHT CIRCUS,
NEW DELHI- 110001

..... RESPONDENT NO.3

Through: Mr.Manas Shukla, Mr.Arun Kumar Shukla and Mr.Naman Shukla, Advocates for R-PNB.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, *vide* the present petition prays for the following reliefs:-

> *"(i) Issue of a writ of certiorari, quashing and setting aside the decision/ order dated 31.03.2022 (Annexure P-1) taken by the Respondents/Respondent no. 3 cancelling the auction process, after the Petitioner was successful in the auction and had deposited the 25 percent of the price of the auctioned property.*
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> *(ii) Issue of a writ of mandamus commanding the Respondents to deem the sale of the auctioned property in favour of the Petitioner as confirmed and to issue sale certificate in her favour after accepting the balance 75 percent price of the auctioned property.*
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> *(iii) Pass any other appropriate order or direction which this Hon'ble Court deems fit.*
>
> *(iv) To allow the Writ petition with cost of the litigation."*

2. The case of the petitioner is that she was declared a successful bidder in an e-auction conducted on 22.03.2022 by respondent-Bank in respect of certain mortgaged property. Pursuant to the same, she deposited 25% of the sale price on 23.03.2022. However, respondent No.3 cancelled the auction process on 31.03.2022.

3. Learned counsel appearing on behalf of the petitioner states that he had served a legal notice to the respondents calling upon them to withdraw

the e-mail dated 02.04.2022, whereby, the decision to cancel the auction had been communicated to the petitioner and to further issue a demand letter regarding the remaining 75% of the bid price. Since there was no fruitful outcome of the same, therefore, the petitioner has been constrained to approach this court under Article 226 of the Constitution of India.

4. After service of the notice, the respondents have filed their reply. The respondents in their counter affidavit have stated that they received a One-Time Settlement (OTS) proposal from the borrower, which was acceptable in view of the applicable policy of the RBI, and pursuant to the same, they have settled the account of the principal borrower. The respondents also state that the bid offered by the petitioner was for Rs.3,53,00,000/- and the borrower proposed an OTS offer for Rs.3,82,00,000/-. The respondents, therefore, state that in their commercial wisdom, they have cancelled the e-auction dated 22.03.2022 and accepted the OTS proposal dated 21.03.2022 and accordingly, the decision was communicated to the petitioner.

5. Learned counsel appearing on behalf of the petitioner states that the decision so taken by the respondents, is contrary to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act, 2002') and the same is arbitrary and illegal, therefore, the petitioner is entitled for the relief claimed in the instant petition.

6. Learned counsel appearing on behalf of the petitioner places reliance on a decision of the Hon'ble Supreme Court in ***Agarwal Tracom Pvt. Ltd. v. Punjab National Bank & Ors.***[1] and states that the petitioner has no remedy to approach the Debts Recovery Tribunal (hereinafter referred to as the

[1] (2018) 1 SCC 626

'DRT') in terms of the provisions of Section 17 of the SARFAESI Act, 2002.

7. I have heard learned counsel appearing on behalf of the parties and perused the record.

8. The Hon'ble Supreme Court in the case of ***Agarwal Tracom Pvt. Ltd.*** (***supra***) in paragraphs 30 and 31 has held as under:-

> *"30. In our view, therefore, the expression any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section13(4).*
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> *31. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression any person as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act."*

9. It is thus seen that the Hon'ble Supreme Court in unequivocal terms has held that the auction purchaser, if is aggrieved by the action of the secured creditor in forfeiting his money, is entitled to avail the remedy under Section 17(1) of the SARFAESI Act, 2002.

10. While considering the decision in the case of ***Agarwal Tracom Pvt. Ltd. (supra),*** this court in its decision dated 01.03.2023 in W.P.(C) No.2334/2023 titled ***Shammy Kumar v. Bank of Baroda and Anr.*** had an occasion to consider the submissions made by the occupant in a mortgaged property, and while deciding whether the remedy under the provisions of Section 17 of the SARFAESI Act, 2002 would be available to him or not, has held that the grievance which essentially relates to any of the measures

taken under Section 13(4) of the SARFAESI Act, 2002 can be raised before the DRT under Section 17 of the SARFAESI Act, 2002.

11. In another decision in the case of ***Sudhakar G Kalambe Vs. Karur Vysya Bank Limited & Anr.*** in W.P. (C) No.3502/2023 decided on 21.03.2023, a similar grievance was raised by the successful bidder whose bid security was forfeited. This court in terms of paragraphs 3 to 5 has held that the aggrieved person therein had an efficacious remedy in terms of Section 17 of the SARFAESI Act, 2002. Paragraph Nos.3 to 5 of the said decision are reproduced as under:-

> *"3. The Hon'ble Supreme Court in the cases of Agarwal Tracom Private Limited v. Punjab National Bank and Ors. and Union Bank of India v. Satywati Tondon and Ors. has held that expression "any person" used in Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (in short, SARFAESI Act) is of wide import. Section 17 takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13 (4) or Section 14 of the SARFAESI Act.*
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> *4. It has also been held that both, the Tribunal and the Appellate Tribunal are empowered under Section 17 and 18 to pass interim orders and are required to decide the matters within a fixed time schedule. It is, therefore, seen that the remedy under Section 17 is available to an aggrieved person under the SARFAESI Act. In the instant case, the petitioner is essentially aggrieved by the measures being taken under the provisions of the SARFAESI Act.*
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> *5. In view of the above, this court is not inclined to entertain the instant petition, however, the petitioner would be at liberty to take appropriate remedy in accordance with law and there is no reason to believe if such a remedy is taken recourse to, the same would not be decided in accordance with law as expeditiously as possible."*

12. In the instant case, what is being contended by the learned counsel appearing on behalf of the petitioner is that the cancellation of the auction notice would not fall within the measures envisaged under Section 13(4) of

the SARFAESI Act, 2002 and therefore, he has no remedy to approach DRT under Section 17 of the SARFAESI Act, 2002.

13. I have carefully considered the submissions. In the considered opinion of this court, the aforesaid argument is not acceptable as there is no such embargo under Section 17 of the SARFAESI Act, 2002. The provisions of Section 17 cannot be read so as to exclude the remedy for any person who is aggrieved by the cancellation of the auction sale or any other steps arising thereto which were taken pursuant to the measures under Section 14 of the SARFAESI Act, 2002.

14. Since the auction notice was one of the measures resorted to by the secured creditor for recovery of the dues and the petitioner has a grievance with respect to the aforesaid measure, therefore, the remedy under Section 17 of the SARFAESI Act, 2002 is available to the petitioner.

15. However, in any case, the writ jurisdiction being equitable and discretionary in nature should not be exercised, unless, there are exceptional circumstances. In view of the same, this court does not consider it appropriate to invoke its powers under Article 226 of the Constitution of India under the facts of the instant case. Reference can also be made to the decisions of the Hon'ble Supreme Court in the cases of ***Commissioner of Income Tax & Ors. v. Chhabil Dass Aggarwal***[2]***, GM, Sri Siddeshwara Co-op. Bank v. Ikbal & Ors.***[3] and ***Mardia Chemicals Ltd. v. Union of India***[4]**.**

16. Learned counsel appearing on behalf of the petitioner, at this stage, states that there was an interim order passed by this court on 17.06.2022 directing the parties to maintain the *status quo* and he apprehends that by the time he

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[2] (2014) 1 SCC 603
[3] (2013) 10 SCC 83
[4] (2004) 4 SCC 311

approaches the concerned DRT, the respondents would hand over the possession of the mortgaged property to the principal borrower. He, therefore, prays that under the facts of the present case, the order of *status quo* may be extended for a period of 30 days from today to enable him to take appropriate remedy in accordance with law.

17. The said prayer is opposed by the learned counsel appearing on behalf of the respondent(s). Learned counsel appearing on behalf of the respondent-Bank states that in any case, the respondent-Bank would not have any objection in refunding the money but the order of *status quo* should not be extended beyond today.

18. I have considered the submissions made by learned counsel appearing on behalf of the parties and in view of the fact that the order of *status quo* is in operation since 17.06.2022, this court deems it appropriate to extend the same for a period of 15 days from today.

19. Accordingly, the instant petition stands dismissed along with the pending application.

20. Needless to state that nothing stated hereinabove shall amount to any expression on the merits or demerits of the case.

21. The petitioner is at liberty to take appropriate remedy in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 24, 2023/*nc*