Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

FMA 775 of 2022
with
IA NO: CAN 1 of 2022

PARESH CHANDRA GHOSH AND ANR.
VS.
PUNJAB NATIONAL BANK AND ANR.

For the Appellants	:	Mr. Samit Sanya Mr. Shekhar Barman Mr. Sabyasachi Roy, Advocates
For the Respondent Bank	:	Mr. Mohit Gupta, Mr. Kaushik Modak, Ms. Mousumi Pal, Advocates

Heard on & Judgement on: August 8, 2024

DEBANGSU BASAK, J.

1. Appeal is directed against an order dated March 21, 2022 passed in WPA 29669 of 2013. Appeal is at the behest of the writ petitioner.

2. Learned advocate appearing for the appellants submits that, the appellants participated in a sale undertaken by the respondent No. 1 under the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act of 2002). Appellants became the highest bidder. Appellants deposited a portion of the purchase price. Subsequently, appellants discovered that there was title defects with regard to the immovable property put up for sale. In fact, there was no access to the immovable property. Consequently, appellants raised several issues with the respondent No.1. Thereafter, respondent No. 1 purported to forfeit the purchase amount. Hence, the appellants filed the writ petition.

3. Learned advocate appearing for the appellants submits that, an interim order was granted on September 27, 2013 in such writ petition. Thereafter, such writ petition was disposed of on March 21, 2022. He submits that, at the very minimum, the respondent No. 1 should return the money deposited by his client.

4. Learned advocate appearing for the Bank relies upon **(2024) 2 SCC 637 [Authorized Officer, State Bank of India vs. C. Natarajan & Anr.]** and submits that, since the sale was undertaken in terms of the Act of 2002 and Security Interest (Enforcement) Rules, 2002, Rule 9(4) and Rule 9(5) of the Rules of 2002 applies. He submits that, since the appellants did not deposit the money within the time specified and extended from time to time, the money deposited by the appellants were rightly forfeited.

5. Records made available to Court establishes that, a sale was sought to be conducted in respect of the immovable property under the provisions of Act of 2002 by the respondent No.1 in which the appellant participated. The appellants was the highest bidder and asked to deposit the entire purchase amount within the time initially fixed. Time to deposit the purchase money was extended from time to time. Entire purchase money was not deposited within the extended time.

6. Learned Single Judge dismissed the writ petition on the ground that there was a large number of disputed questions of fact which cannot be agitated in a writ petition. In any event, the learned Single Judge found that, there were other alternative remedies available to the appellants.

7. Existence of statutory alternative remedy in respect of the sale undertaken under the Act of 2002 cannot be overlooked. In fact, **C Natarajan (supra)** notes an earlier Supreme Court judgment rendered in **(2018) 1 SCC 626 (Agarwal Tracom (P) Ltd. v. Punjab National Bank)** that a forfeiture under Rules 9(4) and (5) of the Rules of 2002 is a measure specified under Section 13(4) of the Act of 2002 and, therefore, amenable to challenge under Section 17 of the Act of 2002.

8. The finding of the learned Single Judge that there are disputed questions of fact involved and that there is statutory alternative remedy so far as the appellants are concerned, cannot be said to be perverse.

9. In such circumstances, we find no merit in the present appeal.

10. FMA 775 of 2022 along with connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

11. I agree.

(Md. Shabbar Rashidi, J.)

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