07.08.2024
Sl. No.238(ML)
srm

W.P.A. No. 15379 of 2024

Sri Prasenjit Das

Versus

Union Bank of India & Anr.

Mr. Tridib Das
…for the Petitioner.

Mr. Prabir Banerjee
…for the Respondent Nos.1 & 2.

Affidavit-of-service is taken on record.

Affidavit-in-opposition filed by the respondent Nos.1 and 2 is taken on record.

It appears that 25% of the bid amount had been deposited by the petitioner with the Union Bank of India.

The petitioner contends that 75% of the balance amount could not be paid as the bank did not supply other documents like the sanction plan, mother deed, notice issued under the SARFAESI Act, possession documents, District Magistrate's order, etc. The petitioner contends that being the successful auction purchaser, 25% of the bid amount had been deposited with the bank. For the balance 75%, the petitioner was required to take a loan from the bank. As the documents were not supplied and the bank refused to grant a loan to the petitioner, the entire sale consideration could not be paid.

It is also specifically stated that the petitioner went to the premises in question on several occasions, but he was physically restrained by the borrower's family and the bank did not ever indicate in the auction notice that the property was encumbered or that there were other persons residing in the property apart from the borrower, like a joint family.

The learned Advocate for the bank has filed an affidavit-in-opposition, *inter alia*, stating that the bank was not liable to refund the money as the petitioner had failed to deposit the 75% of the bid amount within the prescribed period, as per the rules.

The property as described in the auction notice is a residential flat comprising of a super-built up area of 1338 sq.ft. at DD1, popularly known as 'Goel house'. It also appears that the petitioner was not informed that there were litigations in respect of the property in question. Only when he was resisted from entering the building did he come to know about the disputes amongst the family members about the litigation. One of the borrowers has purchased the flat. Thus, the flat is no longer available for sale to the petitioner. It is strange how a borrower could purchase the secured asset after the sale.

Under such circumstances, this Court is of the view that equity demands that the bank must refund 25% of the bid amount which was deposited by the petitioner with the bank sometime in 2022. Such refund shall be made within a period of two months from date of communication of this order. No interest shall be claimed by the petitioner.

Although, there is a forfeiture clause in case of failure of the auction purchaser to pay up 75% of the bid amount, the conduct of the bank does not indicate that the bank had any intention to forfeit the amount. Rather, the question arises as to whether the bank could have at all gone for sale of the said property which was encumbered and which was a part of Goel house, without ensuring how possession could be given. Furthermore, the fact that the bank has sold the said secured asset to one of the borrowers, also indicates that the bank was not serious to go through with the sale made to the petitioner.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)