/L. 14.
March 4, 2024.
MNS.

WPA No. 24017 of 2023

Smt. Rita Mitra
Vs.
Punjab National Bank and another

Mr. Shaswat nayak,
Ms. Mitul Chakraborty,
Ms. Payel Nath

…for the petitioner.

Mr. Dipankar Das

…for the respondents.

1. Affidavit-of-service filed today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner deposited earnest money pursuant to an auction sale notice in which the petitioner turned out to be the successful purchaser. However, subsequently the petitioner could not deposit the balance amount in view of having failed to obtain a loan, which was within the plans of the petitioner, for the purpose such payment. However, it is alleged that the Bank also failed to give a prior inspection, which was contemplated in the concerned documents including the auction notice. It is submitted that the petitioner is at least entitled to a

refund of the earnest money, which has since been forfeited by the Bank.

3. Learned counsel for the petitioner cites a coordinate Bench judgment rendered in *Sushil Kumar Thard vs. National Jute manufactures Corporation Limited and others* reported at *2023 SCC OnLine (Cal) 3157*. The learned Single Judge, in the said judgment, had observed that blanket forfeiture clauses cannot be resorted to by authorities coming within the purview of 'State' under Article 12 of the Constitution of India to exact the forfeiture of the entire prior deposits/pre-bid amounts deposited by an individual. It was held by the learned Single Judge that the forfeiture clause in the bid document was unconscionable since the successful bidder would be visited with the penal effect of the clause even before signing a formal contract. That apart, the learned Single Judge gave an elaborate exposition of the distinction between the expression "liable for forfeiture" and "shall be forfeited":

4. Drawing a distinction between the two, the learned Single Judge observed that whereas the first entails a show-cause notice to be given to the accused person, the expression

"shall be forfeited" may be the expression of an immediate right to forfeit.

5. Learned counsel for the petitioner, on the strength of the said judgment and even otherwise, places reliance on Section 73 of the Contract Act, 1872 and argues that in order to exact a claim of damages, the damages have to be quantified and supported by materials by the claimant. In the present case, in the absence of any support to the claim of the Bank, the entire amount of the pre-bid deposit cannot be forfeited by the Bank.

6. Learned counsel for the Bank places reliance on Rule 9 Sub-Rules (4) and (5) of the Security Interest (Enforcement) Rules, 2002 (for short "the 2002 Rules").

7. A perusal of the said Rules indicates that the balance amount of the purchase price payable shall be paid by the purchaser to the authorized officer on or before the 15th day of the sale of the immovable property or such extended period as agreed in writing. Sub-rule (5) stipulates that in default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claims

to the property or to any part of the sum for which it may be subsequently sold.

8. The present case squarely comes within the purview of Rule 9, sub-rules (4) and (5). Admittedly, the petitioner could not deposit the balance amount within the outer limit as stipulated in Rule 9(4). As such, as an automatic corollary, sub-rule (5) is attracted. As opposed to the ratio laid down in the judgment cited, the present case is one of statutory violation and a consequential statutory right accrued to the Bank as opposed to a general claim of lien in terms of a contractual right.
9. Also, as distinguished from the cited judgment, in the present case, sub-rule (5) of Rule 9 uses the language "shall be forfeited", which closes a right of prior show-cause to the petitioner.
10. In any event, a show-cause is issued only when the right to claim damages is inchoate and there is a consequential counter right in favour of the accused person to place his defence.
11. The best defence of the petitioner, in the present case, is foreclosed in view of the non-payment of the balance amount within the outer limit stipulated in Rule 9(4) of the 2002

Rules. Hence, as a statutory consequence, Rule 9(5) comes into operation, entitling the Bank to forfeit the entire deposit made by the petitioner by way of earnest amount.

12. Thus, the quantification of damage is not a vague or unliquidated amount, since the quantum is not justiciable in the present case in view of the interplay of sub-rules (4) and (5) of Rule 9 of the 2002 Rules.

13. In such view of the matter, the principle and ratio of the cited judgment is not applicable to the present case. The Bank was justified in forfeiting the entire earnest money deposited by the petitioner in view of the non-payment of the balance amount by the petitioner within the stipulated time, in terms of Rule 9, sub-rules (4) and (5).

14. Accordingly, WPA No. 24017 of 2023 is dismissed on contest without any order as to costs.

15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)