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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 24615 of 2023

M/s. HDS Steel Traders
Private Limited & Anr.
Vs.
Punjab National Bank & Ors.

Mr. Kaushik Chandra Gupta,
Mr. Madan Mohan Roy
...for the petitioner

Mr. Abhishek Banerjee,
Ms. Parna Roy Choudhury
...for the Bank

Mr. Rabindra Nath Bag,
Mr. Rohan Rai
...for the respondent no. 5

1. Learned counsel for the petitioners contends that the petitioners purchased a property by way of a SARFAESI sale by the respondent-Bank. The Sale Certificate was issued on January 18, 2021 from where the petitioners first came to know that there was an encumbrance in the form of a pending SA before the Debts Recovery Tribunal-1, Kolkata.

2. It is argued that the Bank never disclosed in its sale notice that the property was so encumbered. Thereafter, under the impression that the Bank would ensure that possession is given to the petitioners, the petitioners entered into a sale deed with the authorised officer of the Bank on April 19,

2021. The petitioners waited for about one year thereafter under the further impression that possession would be handed over to them. However, the application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 filed by the Bank was dismissed by the concerned Magistrate on the premise that there was some discrepancy in the description and identity of the property.

3. Learned counsel for the petitioners seeks possession of the property to be handed over to the petitioners by the Bank and/or refund of the money from the Bank.

4. Learned counsel appearing for the Bank informs the Court that already a challenge has been preferred against the order passed under Section 14 of the 2002 Act.

5. Insofar as the question of refund on the ground of non-disclosure of encumbrance is concerned, the petitioners have acquiesced to such action of the Bank by themselves having entered into an indenture of sale on April 19, 2021 despite the Sale Certificate dated January 18, 2021 having clearly disclosed that an SA was pending before the Debts Recovery Tribunal-1, Kolkata with regard to the property.

6. Not only that, instead of challenging the transaction on the ground that the Bank had suppressed a material fact, the petitioners waited for about one year thereafter.

7. Thus, it cannot be said that the petitioners, being auction purchasers in a Bank sale, were so naïve as to be under the impression that a challenge can be thrown and refund sought at any point of time, even after the petitioners having acted on the Sale Certificate by entering into a sale deed with the authorised officer of the Bank and waiting for one year thereafter.

8. Insofar as the order under Section 14 of the 2002 Act is concerned, being an interested party, since the possession is to be handed over to the petitioners, the petitioners could always have challenged the same with leave of the appropriate forum.

9. However, since the Bank has already preferred a challenge against the order under Section 14 of the 2002 Act, the petitioners will be at liberty to implead themselves in the said challenge and ventilate their grievances before the concerned forum with regard to possession not being handed over to the petitioners.

10. There will be no order as to costs.

11. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)