IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 16056 OF 2024

Shri Manikchand K. Dewasi
Proprietor of M/s. Shree Ganesh Electrical .. Petitioner
Vs.
The Canara Bank and Another .. Respondents

Mr. Tushar V. Dahibawkar i/b M/s. Dahibawkar & Co., Advocates for the petitioner.
Mr. Ranjeev Carvalho a/w Mr. Gajendra Rajput & Mr. Shubham Kahite, Advocates for respondent no.1.
Mr S. N. Joshi, Advocate (Through VC) for respondent no.2.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

DATE : 2nd DECEMBER 2024.

P.C. :

1] Not on board. Taken on board.

2] The challenge raised in this writ petition is to the order dated 28/08/2024 passed by the Debts Recovery Appellate Tribunal by which the order dated 25/11/2021 passed by the Debts Recovery Tribunal in Securitization Application No.36 of 2021 came to be confirmed.

3] The learned counsel for the petitioner seeks to raise the contention that the auction of the secured asset was not conducted in accordance with the Security Interest (Enforcement) Rules, 2002. There was violation of Rule 9(1) of the said Rules for the reason that the notice of sale was served on the petitioner on 14/02/2020, its paper publication was made on 19/02/2020 and the auction sale was conducted on 20/03/2020. The sale was thus conducted on 30th day which is against the law laid down in *Mathew Varghese vs. M. Amritha Kumar and Others* (2014) 5 SCC 610. In addition, it is submitted that the valuation of the secured asset is on a lower side. He therefore submits that a case for interference has been made out.

4]   The learned counsel for respondent no.1 invites attention to the communication dated 07/04/2020 that was issued by the Bank to the petitioner stating therein that excess sale proceeds received under the auction to the tune of Rs 67,80,414/- came to be credited in the Loan Account of the petitioner. The excess amount was accepted without any protest. Hence, this act on the part of the petitioner disentitles him to maintain a challenge to the auction sale.

5]   We find that the contention raised on behalf of respondent no.1 deserves acceptance. After the auction sale was conducted on 20/03/2020 and the bid for an amount of Rs 1,58,10,000/- came to be accepted, the excess amount of Rs 67,80,414/- was accepted by the petitioner without any protest. Having done so, it would not be now permissible for the petitioner to question either the valuation of the secured asset or conduct of the sale on 20/03/2020. It would not be permissible for the petitioner to approbate and reprobate in the same transaction. The sale certificate having been executed, the conduct of auction cannot be re-opened. In that view of the matter, we do not find that any discretion can be exercised in favour of the petitioner for entertaining such challenge. The writ petition is therefore dismissed with no order as to costs.

6]   At this stage, learned counsel for the petitioner seeks deferment of the steps for taking possession of the secured asset scheduled today. Considering the reasons assigned, we are not inclined to accept that request. Same is declined.

[RAJESH S. PATIL, J.]   **[A.S. CHANDURKAR, J.]**