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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3294/2024, CM APPL. 13586/2024 & CM APPL. 13587/2024

M/S KHUKHRAIN BUILDERS & ORS. ..... Petitioners

Through: Mr. Saurabh Kripal, Sr. Adv. with Mr. Ashutosh Thakur & Ms. Adya Luthra, Advs.
M: 9717284820
Email: ashu2638@gmail.com

versus

INDIAN BANK & ORS. ..... Respondents

Through: Ms. Seema Gupta, Adv. for R-1.
M: 9810277083
Email: seemagupta378@yahoo.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 11.03.2024

CM APPL. 13586/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

W.P.(C) 3294/2024 & CM APPL. 13587/2024

3. The present petition has been filed with the following prayers:

> *"xxx xxx xxx*
>
> *a) Grant writ of mandamus, certiorari, prohibition or any other appropriate writ or direction declaring the action of the respondents in undervaluing the property i.e Hotel Revels Plum as arbitrary, unconstitutional, illegal and violative of rights of the petitioners under*

Article 19(1)(g), 21, 300A of the Constitution of India and in violation of principals of natural justice.

b) Issuance of appropriate Writ/Order or Direction in the nature of mandamus directing the Respondents not to take any action on Sale Notice dated 26.02.2024 published in Financial Express newspaper wherein the property is grossly undervalued by the bank in their eagerness to sell the Hotel Revels Plum.

c) Issuance of an appropriate Writ/Order or Direction directing the Respondents to withdraw Notices/proceedings/publication that may have been initiated by them pursuant to undervaluation of Hotel Revels Plum.

d) Issuance of an appropriate Writ/Order or Direction in the nature of mandamus or any other appropriate Writ/Order or Direction restraining the Respondents from acting on the said Sale Notice dated 26.02.2024 published in Financial Express newspaper Delhi edition.

xxx xxx xxx"

4. Learned Senior Counsel appearing for the petitioners submits that petitioners are borrowers-cum-guarantors to a loan availed from respondent-Indian Bank, West Patel Nagar branch.

5. It is submitted that the petitioners have also mortgaged properties owned by them to secure the repayments of the said loan. When the petitioners committed defaults in remitting the dues of the loan, proceedings have been initiated by the bank against the security viz. the properties mortgaged by the petitioners under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI") Act, 2002 for taking over possession and bringing the property for sale.

6. Learned Senior Counsel appearing for the petitioners submits that the petitioners have challenged the SARFAESI proceedings initiated by the respondent-bank in respect of the property in question before the Debt Recovery Tribunal ("DRT")-II, Delhi by way of *S.A. No. 204/2023*.

7. It is submitted that the property of the petitioners, i.e., Hotel Revels Plum, which is intend to be sold in the proceedings initiated under the SARFAESI Act, is situated at Paharganj.

8. It is further submitted that the value of the said property is worth Rs. 36 Crores as per the Valuation Report dated 23rd February, 2024. However, the said property is being sold recklessly by the respondent-bank for a paltry sum of Rs. 1390.50 Lakhs.

9. Attention of this Court has been drawn to the Valuation Report dated 23rd February, 2024, wherein it has been stated as follows:

> "*xxx xxx xxx*
>
> ***<u>VALUE OF THE LAND:</u>***
>
> *1) Area of the Plot = 323 sq. yds or 2907 Sq. ft.*
> *2) Prevailing Market Rate of Commercial Land = Rs. 1,15,000/sq. ft.*
> *3)* ***Fair Market Value of the Land*** *= 2907 sq. ft. @ Rs. 1,15,000/sq. ft.*
> ***= Rs. 33,43,05,000/- …………..(A)***
>
> ***<u>BASIS FOR CALCULATION OF COST OF STRUCTURE</u>***
>
> *The rate of construction is based on the CPWD plinth area rates- 2023. These rates are approved by the Central Board of Direct Taxes. These rates are further enhanced by the mean cost index prevailing on the date of valuation. The items that are not covered under the plinth area rates have been added separately. Taking all the above-mentioned facts into consideration the cost of construction is worked out as follows:*
>
> ***<u>DEPRECIATED VALUE OF STRUCTURE:</u>***
>
> *1) Value of the Basement = 2310 sq. ft @ Rs.900/sq. ft.*
> *= Rs. 20,79,000/-*
> *2) Value of the Super-Structure (G.F., Pt, 2nd & 3rd floors) = 9240 sq. ft. @ 1,400/sq. ft.*
>
> *(2310 x 4 floors = 9240 sq. ft.) = Rs. 1,29,36,000/-*
>
> *3) Adding L.S. for the depreciated*

cost of Lift, Boundary wall, etc. = Rs. 10,00,000/-

4) Total Value of the Structure
(1 + 2 + 3) = Rs. 1,60,15,000/-............... (B)

FAIR MARKET VALUE OF PROPERTY (AS ON 20.02.2024):

(A) Value of Land = Rs. 33,43,05,000/-

(B) Depreciated Value of Structure = Rs. 1,60,15,000/-

Total Value of entire property
as on 20.02.2024 (A+B) = Rs. 35,03,20,000/-

Further it may be noted that The FMV
of Hotel portion = Rs. 23.50 Cr.appx.

FMV of Basement and Ground Floor
Shops (Sold Portion) = Rs. 11.532 Cr. Appx.

RECOMMENDATION

In our opinion, the Fair Market of the Hotel Revels Plum Desh Bandhu Gupta Road, Paharganj, Delhi-110055, as on 20.02.2024, works out as:

1) FMV of Hotel portion = Rs. 23.50 Cr. appx.

2) FMV of Basement and Ground Floor
(Sold Portion) = Rs. 11.532 Cr. appx.

Dated: 23.02.2024 **SONIKA BHATIA**
(Govt. Registered Valuer)"

10. Learned Senior Counsel appearing for the petitioners has also drawn the attention of this Court to the representation dated 01st August, 2023 submitted by the petitioners to the respondent-bank, wherein it has been stated as follows:

"xxx xxx xxx

Sub- Objection to undervaluation of our Hotel Revels Plum at Paharganj, creation of group account with M/s Anand Enterprises owned by Sajal Anand and non-enhancement of credit limit.

Sir,

We are constrained to write this letter as one of our property i.e Hotel Revel Plum which is being intended to be sold in the proceedings initiated under the SARFESI Act is one situated at Paharganj; that the same is worth more than Rs. 35 crores but the same is being sold recklessly by your institution for a paltry sum of Rs.1390.50 Lakhs. In short, the case of our partnership firm is that (i) the property is grossly undervalued by the bank in your eagerness to sell the same (ii) Physical possession of the entire plot No.7 is intended to be taken when the fact is only Hotel Revels Plum on Plot No.7 has been mortgaged.

You have issued a sanction ticket dated 22.07.2020 whereby different business loan/facilities were sanctioned in favour of our partnership firm, which were repayable in terms of the Sanction Ticket.

It is beyond dispute that very wide powers have been conferred on banks and financial institutions under the SARFESI Act to realize the amounts due to them. The said powers include the power to take over possession of securities with a right to transfer it by sale as well. As held consistently by the Apex court, every wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it also. Such powers can be exercised only to effectuate the purposes of the statutes concerned. The responsibility is far graver in legislations enacted for general benefit and common good. Test of reasonableness is also strict in such cases. The exercise of such powers have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable and what is unreasonable is arbitrary. Power to take possession of a property of the defaulter and transfer the same by sale requires the authority to act cautiously, honestly, fairly and reasonably Lack of reasonableness or even fairness at either of the two stages renders the take over and transfer invalid. The authority should justify the action assailed on the touchstone of justness, fairness, reasonableness and as a reasonable prudent owner. Right to property is a constitutional right protected under Article 300A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law. When the provisions of the Act and the Rules made thereunder are analysed and understood in the background of article 300A of the Constitution, it is clear that when it comes to the question of realizing the dues of the secured creditors by bringing the property entrusted with them for sale to realize money advanced without *approaching any court or tribunal, the secured creditor is a trustee and he cannot deal with the property in any manner it likes. The secured creditor, in the circumstances, is duty bound to ensure that maximum price is received from the secured asset and that no one is taking advantage of the vulnerable possession in which the borrower is placed on account of the proceedings against him.*

Merely because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset cannot be disposed of in a casual or light-hearted manner (Mathew Varghese v. M. Amritha Kumar [(2014) 5 SCC 610]). It is relevant in this context to refer to the following observations made by the Apex court in Ram Kishun v. State of U.P [(2012) 11 SCC 511]:

> *"Undoubtedly, public n1oney should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, 1nay be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions."*

The above principles make it clear that though the recovery of public dues should be made expeditiously, it should be in accordance with the procedure prescribed by law and that it should not frustrate a constitutional right as well as the human.

xxx xxx xxx"

11. Thus, learned Senior Counsel appearing for the petitioners submits that the respondent-bank cannot undervalue the secured asset of the petitioners.

12. It is submitted that merely because a secured interest in a secured asset is created by the petitioners in favor of the respondent-bank, being the secured creditor, the said asset cannot be disposed of in a casual or light-hearted manner.

13. Learned Senior Counsel appearing for the petitioners further submits that the petitioners are willing to make full payment of the dues payable to

the respondent-bank by June, 2024.

14. On the other hand, learned counsel appearing for respondent nos. 1 and 2 submits that the bank has also got done valuation of the property in question. She has handed over a copy of a Valuation Report, vide which it is recorded that the market value of the property is Rs. 15,45,03,000/- and realizable value of the property is Rs. 13,90,52,700/-.

15. Thus, she submits that the reserve price of Rs. 1390.53 Lakh has rightly been put in the sale notice for e-auction, which is to be conducted on 22nd March, 2024.

16. She further submits that the petitioners have already approached the DRT seeking stay of handing over the physical possession of the property in question, which has been declined by the DRT. She further submits that against the aforesaid order of the DRT, the petitioner herein has not filed any appeal before Debt Recovery Appellate Tribunal ("DRAT"). Thus, she submits that the present petition would not be maintainable before this Court.

17. She further submits that the valuation of the property is low, as portions of the aforesaid property are occupied by the tenants. She also submits that the property in question is a leasehold property.

18. I have heard learned counsels for the parties and have perused the records.

19. Without going into the issue with respect to maintainability of the present petition, considering the facts and circumstances urged before this Court, it is directed that the present writ petition filed by the petitioners be considered as a representation by the respondent no. 1-Bank.

20. The Valuation Report relied upon by the learned counsel appearing

for the respondent no. 1-bank shall also be supplied to the learned counsels appearing for the petitioners today itself, on the E-mail which is reflected in today's order.

21. The respondent-bank shall consider the various submissions raised by the petitioners and dispose of the representation of the petitioners, after granting opportunity of hearing, by way of a speaking order, on or before 22nd March, 2024, which is the date for e-auction of the property in question.

22. It is clarified that this Court has not commented on the merits of the case of either of the parties. Further, this Court has not stayed the e-auction, which is to be held on 22nd March, 2024 in terms of the sale notice issued by the respondent-bank on 26th February, 2024.

23. The present petition is disposed of in terms of the aforesaid directions.

MINI PUSHKARNA, J

MARCH 11, 2024/kr