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

\+ W.P.(C) 13170/2024

MEENAKSHI GARG .....Petitioner

Through: Mr. Deepak Tyagi, Advocate

versus

CENTRAL VIGILANCE COMMISSION THROUGH ITS COMMISSIONER & ANR. .....Respondents

Through: Mr. Ravinder Agarwal, Advocate for R-1
Mr. Chandra Prakash, Mr. Bharat Upreti, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **19.09.2024**

CM APPL. 55051/2024 (*Exemption*)

1. Exemption is granted, subject to all just exceptions.

2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules.

3. Accordingly, the application stands disposed of.

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4. The Petitioner, Ms. Meenakshi Garg, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking directions to the Respondents to conduct enquiry/investigation into the action of the Chief Regional Manager and Assistant General Manager of Indian Overseas Bank (IOB), based on her complaint dated 19th March, 2024, and subsequent reminder dated 21st June, 2024.

5. The background narrative set out by the Petitioner leading to the initiation of the present proceedings is as follows:

5.1 IOB had issued a notice dated 11th February, 2024 in the Newspaper, for the sale of property bearing No. 749, Udyog Vihar Phase-VI, Pay City, Sector-37, Gurugram, Haryana. The Petitioner had offered to purchase the said property for an amount of INR 11.05 Crores through a recovery agent *vide* email dated 27th February, 2024. The Petitioner subsequently revised her offer to INR 11.25 Crores in an email sent on 28th February, 2024.

5.2 The Petitioner received email communication dated 28th February, 2024 from the Assistant General Manager, IOB, stating that the sale of the aforesaid property had been concluded on 23rd February, 2024 upon receipt of the consideration amount of INR 10.80 Crores from the purchaser. The Petitioner responded through email dated 28th February, 2024 objecting to the sale.

5.3 In response, IOB *vide* email dated 1st March, 2024, intimated the Petitioner that the sale of the said property had been concluded and the sale certificate had been issued. However, in light of her revised offer, the Petitioner was given an opportunity to deposit the entire revised offer amount of INR 11.25 Crores for consideration by the SARFAESI Committee.

5.4 The Petitioner thereafter deposited a demand draft of Rs. 281.25 Lakhs, *i.e.*, 25% of the consideration amount offered by her. However, she was informed by the recovery agent that IOB had refused to accept the said draft.

5.5 The Petitioner issued a legal notice dated 16th March, 2024 to IOB, asserting that her offer, being higher than that of the purchaser, should have been accepted in accordance with Rule 9(2), (3), and (4) of the SARFAESI (Security Interest Enforcement) Rules, 2002. Through the legal notice, the Petitioner called upon IOB to cancel the sale certificate issued in favour of the successful purchaser.

6. In light of the above factual matrix, Mr. Deepak Tyagi, learned Counsel for the Petitioner, contends that the actions of IOB are arbitrary, irrational, and devoid of any reasonable justification. He asserts that IOB has acted in bad faith, conspiring with the purchaser to deprive the Petitioner of a fair opportunity to secure the property despite her higher offer. Mr. Tyagi further alleges that both the Chief Regional Manager and the Assistant General Manager of IOB have deliberately withheld the identity of the purchaser, raising serious concerns about transparency in the transaction. He argues that their actions are not only biased, but indicative of collusion with the purchaser, casting doubt on the integrity of the entire sale process. Such conduct, according to the Petitioner, violates fundamental principles of fairness and accountability expected from a public financial institution like IOB.

7. It is noted that the Petitioner has also filed an application under Section 17 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 against the IOB, seeking setting aside of the sale certificates in respect of the property in question. The IOB is contesting the said proceedings. They have also categorically responded to the Petitioner's allegations through a detailed reply wherein they have stated as under:

> *"We, for and on and under instructions on behalf of our client namely Indian Overseas Bank, having its office at Asset Recovery Management Branch. Rachna Building, 4th Floor, Rajendra Place, Pusa Road, New Delhi (hereinafter referred to as 'our client'), replies to the notice under reference as hereunder:*

At the outset, we deny each and every averment/ allegation raised by your client in the referred Notice being false, misconceived, frivolous, vague, implanted and irrelevant save and expect which are expressly admitted. We further for and on behalf of our client state that your client has not provided you correct information and facts and thus, have mislead you into issuing this frivolous notice under reply.

The entire premises of the notice under reply is based upon a hypothesis that although your client bid for higher amount in the sale by way of private treaty of the immovable mortgaged property i.e. Industrial Land and Building at Property No.749, Udyog Vihar, Phase --VI, Pace City, Sector- 37, Gurgaon, Haryana (measuring 2511.60 sq. yards with shed constructed on it) but the sale was not confirmed in her favour. In response of that allegation raised by your client. it is stated that:

(i) Under the scheme as provided under the SARFAESI Act, 2002 and the Rule made thereunder, our client, a secured creditor is entitled to sell the immovable mortgaged property by adopting any of the methods as provided under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. Earlier, our client put the subject property on auction by way of inviting bids from the public, however, no bid was received and the auction was failed. one time.

(ii) As the said property could not be sold by way of public auction, our client received an offer to sell the subject property by way of private treaty with subsequent consent of the borrower/mortgagor. Accordingly, our client/ Bank issued a 'Notice of Sale by Private Treaty' dated 09.02.2024 to the borrower/mortgagor. Further, to ensure the service of that notice of sale upon the mortgagor/borrowers, Bank also published the same on 11.02.2024 in the two newspapers, one in English another in vernacular, however, the publication of that notice is not mandatory under the provisions of the SARFAESI Act, 2002.

(iii) It is pertinent to note that after settling the terms between secured creditor/Bank_ and proposed purchaser/buyer, the said buyer deposited the entire sale consideration of the subject mortgaged property on 23.02.2024 and the sale through private treaty stand concluded in favour of that buyer as and when the entire sale consideration was paid.

(iv) It is important to note that the aforesaid publication of notice was not the notice to the public at large but intended to be served upon the borrower/mortgagor/guarantors only whose names are specifically mentioned therein. As such, the aforesaid notice published in

newspapers can never be considered as notice issued to the public at large. Further, by language of that notice. it can never be imagined that any bid has ever been invited through that notice as your client is trying to portrait.

(v) Strangely, after conclusion of the sale in favour of the aforesaid buyer, an email was suddenly received on 27.02.2024 from a recovery agent of the bank with the offer on behalf of your client to buy the aforesaid property for a sale consideration of Rs. 11.05 crore. Further, vide email dated 28.02.2024, your client increased her offer to Rs. 11.25 Crore. In reply to that email dated 28.02.2024, our client sent an email on the same day informing that the Bank is unable to consider her offer as the sale of the aforesaid property has been concluded on 23.02.2024 through private treaty, however, sale certificate was not issued.

(vi) As your client was consistently following up with our client/Bank, our client advised your client to deposit the entire offered amount of Rs. 11.25 Crore on or before 06.03.2024 which time was subsequently extended till 09.03.2024 so as to inter-say bidding can be conducted, However, your client has failed to deposit the amount within extended period despite the ample opportunities.

(vii) Further, your client, referring to the tentative date of conclusion of the sale as mentioned in the newspaper publication of the sale notice of private treaty, insisted upon the bank to consider her offer. Your client misinterpreted the tentative date of conclusion of the sale as mentioned in the notice of sale by private treaty. It was specifically mentioned in para no. 6 of the notice of sale by private treaty that "the tentative date and time for conclusion of the sale is 28.02.2024 at 11 :00 AM." Further, under para no. 9 of that notice, the borrower/mortgagor were informed to pay the amount outstanding before the conclusion of the sale on 28.02.2024. It is clear from mere perusal of both the para nos. 6 and 9 of the sale notice that time was given to the borrower/mortgagor till conclusion of the sale i.e. 28.02.2024 to make the payment to redeem the property under section 13(8) of the Act. As the mortgagor failed to redeem the property, by no stretch of imagination, it can be interpretated that the sale by private treaty could not be concluded before 28.02.2024. Even otherwise, notice for sale by private treaty dated 09.02.2024 is not the notice to invite the bid from public at large and therefore offer of your client on the basis of newspaper publication cannot be accepted after the conclusion of the sale.

(viii) It is evident from the foregoing that your client was never serious to purchase the aforesaid property and has failed to show her bona-fide despite the ample opportunities granted by the Bank.

(ix) Since, the auction has been completed by way of private treaty with consent of the borrower/mortgagor, your client has no locus to issue such frivolous notice or to threaten our client for initiating any proceeding whatsoever.

(x) It is stated that the notice under reply is amount to abuse of the process of law.

In view of the foregoing, it is stated that the legal notice under reply is nothing but a means to intimidate and harass our client as the property in question has been sold by the Bank in adherence to the provisions as mentioned in the SARFAESI Act, 2002. Such misconduct on the part of your client is amount to restrain the bank from recovery of the public money. We further for and on behalf of our client state that your client has not provided you correct information and facts and thus. has mislead you into issuing the notice under reply. Your client has miserably failed to establish the locus and grounds for issuance the notice under reply. It is stated that your client has intentionally issued the notice under reply to harass, and intimidate our client. In view of the aforesaid facts and circumstances, you are requested to advise your client to withdraw the notice under reply immediately. Any legal proceeding, if initiated, will be defended at the cost of your client."

8. The Court finds that the IOB has provided a detailed and well-reasoned explanation for the sale process, which has been conducted in compliance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and the Security Interest (Enforcement) Rules, 2002. IOB has explained the sequence of events leading up to the sale, including the failure of the initial public auction, the subsequent sale through private treaty with the consent of the borrower, and the final conclusion of the sale upon receipt of the full consideration amount.

9. The Petitioner's contention that her higher offer should have been accepted is misconceived, as the sale had already been completed before her offer was made. IOB's decision to proceed with private treaty sale is well

within its legal rights under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002. IOB has further clarified that the newspaper notice was not an invitation for public bidding, but was intended for the borrower/mortgagor, and therefore, the Petitioner's reliance on this notice is both factually and legally flawed. The IOB had also provided ample time for the Petitioner to deposit the full consideration amount, which she failed to do within the stipulated timeframe.

10. It is also noted that the Petitioner has already invoked her right to judicial remedy by filing an application under Section 17 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993, which is pending adjudication. This legal recourse directly addresses the issue of the sale of property, and the present petition seeks to sidestep that process by raising extraneous claims and demanding an inquiry into the conduct of IOB's officers. The attempt to pursue parallel proceedings while a judicial remedy is pending, reflects an intention of creating undue pressure on IOB and its officers, which in the Court's view, amounts to an abuse of legal process.

11. The Petitioner's allegations of conspiracy and misconduct by the IOB officers are unsupported by any credible evidence. IOB, through its detailed response, has firmly denied all such allegations and demonstrated that its actions were in accordance with the law. The Court finds no basis to interfere with IOB's conduct or to order any investigation into the actions of its officers, particularly when the sale process has been carried out in compliance with statutory provisions.

13. In light of the above, the Court is of the opinion that the present petition is frivolous and vexatious, aimed at harassing the IOB and its officers without any lawful basis. The Petitioner's approach of initiating

multiple legal proceedings, despite having an available judicial remedy under the SARFAESI Act, constitutes an abuse of the process of law.

14. Accordingly, the petition is dismissed with costs of INR 30,000/-, to be deposited with the Delhi Legal Services Authority within four weeks from today.

SANJEEV NARULA, J

SEPTEMBER 19, 2024/ab