



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

% **Judgment reserved on : 18 July 2024**
Judgment pronounced on : 03 September 2024

+ **W.P.(C) 12438/2018 & CM APPL. 21228/2022**

TRENCHLESS ENGINEERING SERVICE PRIVATE LIMITEDPetitioner

Through: **Mr.Shiva Sambyal, Advocate.**

versus

PUNJAB NATIONAL BANK & ORSRespondents

Through: **Ms. Saloni Nagoria, Advocate.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking directions for issuance of a writ of *Mandamus* or any other appropriate writ, order or direction, thereby challenging the legal validity of the Refund Letter¹ dated 31.08.2018 and seeking the following reliefs:

- a. Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction in nature of mandamus directing the Respondents to refund earnest money of the petitioner amounting to Rs. 24,80,000/- (Twenty Four Lakhs Eighty thousand only) along with interest at the rate of 12 percent from the dated of first refusal i.e. 13.03.2018; and
- b. Pass any other and such further orders as this Hon'ble Court may in the facts and circumstances deem fit and proper.

¹ Impugned letter



2. The genesis of the instant writ petition lies in the E-Auction Notice² dated 04.02.2018 published by respondent No.1/Punjab National Bank [**PNB**] (*hereinafter referred to as the 'respondent bank'*) in the newspaper 'Hindustan Times', wherein it invited sealed tenders from prospective buyers for sale of the property bearing Industrial Plot No. 852, Udhyog Vihar, Phase-V, admeasuring 250 square metres, Gurugram, Haryana³, which property is in the name of M/s Beauty Wears, a proprietorship concern of Sh. Inder Arora. It is pertinent to note that the Subject Property was mortgaged to the respondent bank by one borrower namely M/s Smriti Apparel Private Limited with the main branch at Gurgaon, Haryana.

3. On 22.02.2018, the petitioner, being a private entity dealing in Trenchless and various multi-speciality businesses apart from being a Horizontal Directions Drilling [**HDD**] contractor and represented through its Authorized Representative [**AR**], approached the respondent bank for participation in the said auction process and for purchase of the Subject Property, which request for participation was duly accepted by the respondent bank.

4. Resultantly, on 22.02.2018, the petitioner paid a sum of Rs. 24,80,000/- *vide* transaction reference No. RTGS ICICR42018022200274803 as Earnest Money Deposit⁴ as per the terms and conditions of the Sale Notice towards the Subject Property. On 12.03.2018, the petitioner was declared as the successful bidder for

² Sale Notice

³ Subject Property

⁴ EMD



the aforesaid Subject Property for a total sale consideration of Rs. 3.40 crores.

5. Further, *vide* email dated 13.03.2018, the respondent bank requested the petitioner to pay the balance amount of 25 % of the sale price besides the EMD as the same was required to be paid within one day and the rest 75 % balance amount was to be paid within 15 days as per the terms and conditions of the Sale Notice. It is the case of the petitioner that intriguingly, on the same day, the petitioner was intimidated by one Mr. Pankaj Khurana that the Subject property was provisionally transferred to them, and in this regard, the petitioner was apprised of the Provisional Transfer Letter [**'PTL'**] dated 23.10.2017 issued by Haryana State Infrastructure Development Corporation [**'HSIDC'**].

6. Axiomatically, on 13.03.2018, the petitioner sent an email to the respondent bank seeking the original successful bid letter issued by them so that 25 % of the bid amount could be paid but the said amount was not paid by the petitioner and the same was conveyed to him by the respondent bank *vide* email dated 14.03.2018. Consequently, the EMD stood forfeited by the respondent bank in terms of Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 (*hereinafter referred to as the "Security Rules" for brevity*), which was duly conveyed to the petitioner *vide* an email dated 17.03.2018.

7. As per the records, the petitioner sent several letters in the form of reminders, the latest one being dated 06.08.2018, seeking refund of the EMD of Rs. 24.80 lacs along with interest @ 12%, which request was repudiated by the respondent bank *vide* the Impugned letter dated



31.08.2018. Consequently, a complaint dated 28.08.2018 was filed by the petitioner with the Reserve Bank of India ['RBI'], thereby seeking RBIs' involvement in the present dispute with the respondent bank. On perusal, it can be seen that the aforesaid complaint was rendered otiose as *vide* email dated 04.09.2018, the Banking Ombudsman of the RBI informed the petitioner that the said complaint preferred by the petitioner is not covered under clause (8) of the Banking Ombudsman Scheme, 2006.

8. Thereupon, the petitioner preferred the present writ petition before this Court. As of now, the main grievance of the petitioner is that he has not been refunded the EMD of Rs. 24.80 lacs, which has been forfeited by the respondent bank on completely arbitrary and unfair grounds.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

9. Learned counsel for the petitioner stated that the Sale Notice dated 04.02.2017 was misleading in as much as it failed to furnish the relevant particulars because the status of possession of the Subject Property was mentioned to be physical but the Corrigendum dated 26.02.2018 clarified that the respondent bank had symbolic possession of the Subject Property, which fact was not conveyed to the petitioner and was not brought to the notice of this Court. It was further averred that the respondent bank deliberately concealed the fact of creation of third-party interests in the Subject Property.

10. *Per Contra*, learned counsel for the respondent bank urged that the writ petition is not maintainable *per se* as the petitioner herein seeks recovery of the EMD of Rs. 24.80 lacs, for which he could have



filed a suit for recovery before the appropriate Court. Further, alluding to Rule 9(3) and 9(4) of the Security Rules, it was submitted by the learned counsel for the respondent that the said EMD was forfeited as per the said Rules in accordance with law, which was duly conveyed to the petitioner *vide* letter dated 17.03.2018. Lastly, it was averred that the Corrigendum dated 26.02.2018 clearly specified that the said Subject Property is in the symbolic possession of the respondent bank.

ANALYSIS AND DECISION:

11. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the bar. I have meticulously perused the relevant documents placed and relied upon on the record.

12. At the outset, this Court unhesitatingly finds that the forfeiture of the earnest money by the bank is not only unjustifiable, arbitrary but also completely unfair thereby unjustly enriching themselves. Although in the counter affidavit of the respondent, it is very conveniently deposed that the initial e-auction notice dated 04.02.2018 was very specific to the effect that the subject property shall be transferred/conveyed on 'as is where is basis' and 'as is what is' condition, however, there is no denying from the fact that in the initial public e-auction notice dated 04.02.20218, the column notifying the status of possession (physical or symbolic) was stated to be "physical".

13. Evidently, the petitioner, based on such declaration by the bank, paid the earnest money in question on 22.02.2018. It was only after such deposit that the respondent Bank brought a corrigendum e-



auction sale notice to general public dated 26.02.2018 in the Hindustan Times Edition, New Delhi, whereby the status of the property was shown to be “symbolic”. By all means, this was a vital change in the key conditions of the e-auction. If the business practices and experience are any indication, the issue of status of the subject property as to whether it is in physical possession or symbolic possession of the auction seller is of key importance, which would determine the whole disposition of the bidder as to the bidding amount.

14. There is no gainsaying that if the possession of the auctioneer is ‘physical’, the auction bidder has a reasonable expectation that as soon as their bid is accepted and they comply with the terms and conditions of the auction, they will be able to gain possession of the property. Whereas, in the case of the property being in ‘symbolic possession’ of the auctioneer, the bidder may not only adjust the bidding price but also reasonably expect to know that there may be formalities to be completed in order to acquire possession of the property at a later stage.

15. In the instant case, the petitioner came to know that the property in question had been provisionally sold by HSIDC to a third party much prior to the e-auction public notice viz. on 23.10.2017, which document is annexed as P-3 on the record that demonstrates that the property had already been sold to one Mr. Pankaj Khurana and Mr. Gagan Khurana. Admittedly, thereafter, he wrote an e-mail dated 13.03.2018 to the respondent bank seeking confirmation with regard to the status of the property and the trail of e-mails would suggest that



instead of replying to the petitioner, they insisted that the bid amount to the extent of 25% be deposited forthwith.

16. To my mind, it was incumbent upon the respondent bank to act not only fairly but also in a transparent manner. The respondent bank had a legal duty to satisfy the successful bidder to the effect that there was no issue with regard to the status of the property. In the present day and age of information technology, the replies by the respondent bank on 13.03.2018 reflect a hegemonistic attitude. The bank officials dealing with their customers or anyone interested in dealing with them should try to find solutions to their problems rather than confounding them.

17. In view of the above, the plea by learned counsel for the respondents that the writ is not maintainable as there is an efficacious remedy available to the petitioner to seek recovery of amount of earnest money cannot be sustained. Unhesitatingly, the action of the respondent bank in forfeiting the earnest money lacks fairness and transparency in public dealings and is in complete violation of Rules 9(4) and 9(5) of the Security Interest (Enforcement) Rules, 2002 whereby the earnest money could have been forfeited only on expiry of 15 days from the confirmation of sale of immoveable property, which in this case was forfeited within five days.

18. The plea by the learned counsel for the respondent that the bank later had to e-auction the property at a much lesser price does not hold water. The respondent bank is itself to be blamed for the factually incorrect and misleading e-auction sale notice dated 04.02.2018. The least the bank could have done was to extend the period of e-auction



after issuing the corrigendum and sending individual notices to the bidders, which was evidently not done.

19. In view of the foregoing discussions, since the forfeiture of the earnest money was done for reasons which are solely attributable to the respondent bank, the present writ petition is allowed. The respondent bank is directed to refund the earnest money of the petitioner amounting to Rs.24,80,000/- along with interest @ 12% per annum from the date of first refusal i.e. 13.03.2018 till realisation.

20. In the peculiar facts and circumstances of the case, the petitioner shall also be entitled to refund of the costs of legal proceedings, which would be a token amount of Rs.1,00,000/- payable to the petitioner within a month, failing which the same shall be payable with interest @ 12% per annum.

21. The writ petition along with the pending application stand disposed of accordingly.

DHARMESH SHARMA, J.

SEPTEMBER 03, 2024

VLD