

2503
2025

TUESDAY

Court : CB-28
Item : DL-04
Bench : SINGLE
Matter : WPA
Status : DISMISSED
ID : 266306
AR : NANDY

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26155 OF 2024

SEKH GOLAM HOSSAIN & ANR.
VS.
UNION OF INDIA & ORS.

MR. SUBRATA BHATTACHARYA, ADVOCATE
MS. SHIPRA SARKAR, ADVOCATE
.....for the Petitioners

1. The affidavit of service, filed in Court today, be kept with the record.
2. From the affidavit of service, it appears that the respondent no. 3 being Assistant General Manager of Punjab National Bank, has been served. Despite service, none appears for the respondent-Bank.
3. The writ-petitioners, two in number, have approached this Court seeking refund of Rs.48,60,000/- (Rupees Forty-Eight Lakhs Sixty Thousand only) deposited by one Sathi Agricultural Multi Himghar Pvt. Ltd. (hereinafter referred to as 'Himghar'), by way of earnest money in an auction sale conducted by the Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short The SARFAESI Act).
4. It appears that the said Himghar was declared as the successful bidder but since it failed to put in the balance sum within the time required by the Bank, the Bank forfeited the earnest

money to the tune of 25% that had been deposited by the auction-purchaser.

5. Upon hearing the learned Advocate for the petitioner and considering the material on record, this Court is of the view that the instant writ-petition cannot be entertained for the following reasons:-

- i) The auction-purchaser was one Sathi Agricultural Multi Himghar Pvt. Ltd., being a company and therefore a juristic entity. The said company has not approached this Court as the writ-petitioner. The writ petition has instead been filed by the writ-petitioners who claim to be the erstwhile Directors of the said Himghar. The writ-petition cannot be maintained by the erstwhile Directors of a company without the Company itself, being one of the petitioners.
- ii) In view of the first ground itself, the writ-petition deserves dismissal. It is now very well-settled that remedy of a person who is aggrieved by forfeiture of the earnest money in terms of Rule 9(5) of the Security Interest (Enforcement) Rules, 2002 lies before the Debts Recovery Tribunal. Reference in this connection may be made to the case of Agarwal Tracom (P) Ltd. Vs. Punjab National Bank¹.
- iii) It is equally well-settled that Bank's act of forfeiture of the earnest money deposited by any auction-purchaser, can only be challenged, if it can be successfully demonstrated before the Court that such act was *de hors* the Rules or an exceptional case for interference by this Writ Court has been made out. Reference in this connection may be made to the case of SBI

vs. C. Natarajan² and Central Bank of India vs. Shanmugavelu³. In the instant matter, no such case has been made out.

- iv) It is evident from the averments made in the writ-petition that the sale pursuant to which the auction-purchaser put in the earnest money was conducted in the year 2017 and the amount was forfeited in the same year. The successful auction-purchaser i.e. Sathi Agricultural Multi Himghar Pvt. Ltd., had participated in a subsequent sale also which was conducted in the year 2018. Such participation in the subsequent sale without challenging the forfeiture in the earlier sale of 2017 in any case amounts to acceptance of the forfeiture as a result of waiver of the right to challenge the forfeiture and to seek refund of the forfeited amount.
 - v) The writ-petition, in any case, is inordinately delayed inasmuch as the cause of action to challenge the forfeiture arose in the year 2017 and the writ-petition has been filed in the year 2014, without any explanation as to why the delay was occasioned.
6. For all the reasons aforesaid, **WPA 26155 of 2024 is dismissed**. No order as to costs.

(OM NARAYAN RAI, J.)

