23.06.2026
Court No.12
Item 03
cp/gc

MAT 1840 of 2023
CAN 1 of 2023

Union Bank of India & Ors.
Vs.
Lincoln Education Academy

Mr. Ratnanko Banerji, Sr. Adv.,
Mr. Ranajit Chowdhury,
Mr. Sudipto Chowdhury,
Ms. Sampoorna Saha

… for the Appellants.

Mr. Probal Mukherjee, Sr. Adv.,
Ms. Deblina Lahiri,
Mr. Debashis Sarkar,
Mr. Mrinmoy Chatterjee

… for the Respondent.

Mr. Pranit Bag
Ms. Khushboo Choudhary

….for the intervener.

1. The appeal arises out of a judgment and order dated August 11, 2023, passed by a learned Single Judge in WPA 4302 of 2023 and the connected applications.

2. Her Lordship allowed the writ petition as also the applications, thereby, directing the appellant, Union Bank of India, to return an amount of Rs.4,16,50,000/- to the writ petitioner/ respondent, within 10 weeks from the date of the order.

3. The bank and its officials have preferred the appeal on the ground that the writ court lacked jurisdiction to entertain the said writ petition and allow the

prayers made therein, in view of an alternative efficacious remedy before the Debts Recovery Tribunal. It was urged that writ court failed to appreciate the binding nature of the provisions of Rule 9(5) of the Security Interest (Enforcement) Rules, 2002.

4. According to Mr. Ratnanko Banerji, learned Senior Advocate, on every sale of immoveable property the purchaser was required to pay on the same day or not later than the next working day, an amount equivalent to 25% of the sale price, which was inclusive of the earnest money deposited, if any, to the authorized officer conducting the sale and, in default of such deposit, the property could be sold again. The balance amount of the purchase price was to be paid before the 15th day from confirmation of sale of the immoveable property or within such extended period as may be agreed upon in writing between the purchaser and the secured creditor, but in any case not exceeding three months.

5. According to Mr. Banerji, even if the balance of the purchase price could not be deposited within 15 days from the confirmation of sale, the writ petitioner/auction purchaser had the option to pay the balance money within three months from the date of confirmation of sale. Mr. Banerji gives us

the relevant dates of the events. The sale was confirmed on November 18, 2022. The forfeiture of the 25% of the purchase price took place on February 17, 2023.

6. It was contended by Mr. Banerji, that the learned Single Judge was persuaded by the factum of pending litigations while adopting a humanitarian approach to justify the conduct of the auction purchaser of not taking the risk of paying the balance amount. The fate of the litigations were uncertain and Her Ladyship held so. According to him, the forfeiture had taken effect by operation of law and as such, the writ court could not direct refund, by rewriting the statute.

7. Our attention was drawn to the sale notice which indicated under Clauses 26 and 27 thereof, that the sale was being made on ‘As is where is’, ‘As is what is’ and ‘Whatever there is’ condition. The sale was made subject to the outcome of all the pending proceedings before the DRT-3, Kolkata, the appeal before the DRAT, Kolkata, the appeal and the suit before the High Court at Calcutta.

8. Thus, it was further contended that the subsequent order of injunction passed in C.S. 390 of 2014, i.e. after the cancellation of the sale in favour of the writ petitioner/auction purchaser upon forfeiture, could

not have been a ground for the writ court to direct refund of the forfeited amount. The court erred in holding that, in view of the order of injunction upon the bank from transferring the property, the auction purchaser could not be blamed for not going through with the sale by discharging their obligations under Rules to pay the balance sum. Reliance was placed on the following decisions:-

I. Authorised Officer, Central Bank of India vs. Shanmugavelu, reported in (2024) 6 SCC 641.

II. PHR Invent Educational Society vs. UCO Bank & Ors., reported in (2024) 6 SCC 579.

III. Authorized Officer State Bank of India vs. C. Natarajan & Anr, reported in 2023 SCC Online SC 510.

9. Mr. Mukherjee, learned senior advocate appearing on behalf of the writ petitioner/auction purchaser, submits that, in the understanding of the auction purchaser, the time period mentioned under Rule 9(4) would be computed after the expiry of the 15th day from confirmation of sale. Secondly, in view of the order of injunction passed by the DRT (3), in the proceeding instituted by the borrower, the auction purchaser was confused and afraid to invest the money in a situation when the bank was in no

position to convey the property free from all encumbrances, even if the money was deposited. Mr. Mukherjee submitted that, during the pendency of all the litigations as also a criminal investigation, it would be an absurd proposition that the auction purchaser would invest substantial money and purchase such property.

10. Finally it was urged that the writ petition was maintainable. The auction purchaser was added as a defendant in the proceeding before the DRT and had already suffered an order of injunction. The prayer for refund could not be made in such proceeding. It is also contended that the auction purchaser is now willing to pay the balance amount and the bank may be directed to take steps to issue the sale certificate.

11. Having heard the learned senior advocates for the respective parties, we find that Dr. S. Banerjee, on behalf of the respondent, communicated with the bank, inter alia, acknowledging the liability to pay 75% of the purchase price within December 3, 2022. However, as funds were not available within the stipulated time, a request was made to allow further extension of 15 days to make the payment. Admittedly, the payment was not made within the time mentioned in the Rules. The relevant

provisions of The Security Interest (Enforcement) Rules, 2002 are quoted below:-

> "9(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;]
>
> 9(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].
>
> 9(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold."

12. By a communication dated February 17, 2023, at 3.27 pm, the bank brought it to the notice of the auction purchaser that the payment should be made on the said date itself, failing which Rs.4,16,50,000/- would be forfeited as per the auction notice.

13. The understanding of the auction purchaser with regard to the time limit fixed under Rule 9(4) is irrelevant in the context, as the bank had already

brought it to the notice of the auction purchaser, the last date for the payment and also that, if the payment was not made within that day, the deposit of 25% would be forfeited. The time limit is 90 days from the confirmation of sale and not 15 days + 3 months.

14. Secondly, we find that in paragraph 14 of the sale notice, the provisions of Rule 9 had been clearly enumerated. In paragraphs 26 and 27, the fact that the sale was on 'As is where is', 'As is what is' and 'Whatever there is' basis, was already mentioned. All the pending litigations, including the suit before the High Court have also been mentioned. The auction purchaser was on notice with regard to all the pending litigations and also was apprised of the fact that sale would be subject to the outcome of those litigations.

15. Thus, Her Ladyship erred in holding that the auction purchaser could not be faulted for withholding the remaining payment, as they were unsure of the outcome of the litigation. Secondly, forfeiture was an automatic consequence for non-payment of the balance amount within three months from the confirmation of the sale. The order of injunction was passed after the forfeiture had taken place and the order of injunction in the suit

was passed much later, when a second sale notice had been published by the bank. The contention of Mr. Mukherjee that the DRT passed the order of injunction before the period of three months had expired and, as such, the auction purchaser could not take steps, cannot be accepted because the injunction was not upon the bank from proceeding with the sale in favour of the auction purchaser. The injunction was on the auction purchaser from alienating the property by creating any third party interest, which means that the DRT took notice of the fact that the transaction between the auction purchaser and the bank could not be interfered with in view of the legal process which had already been initiated under the SARFAESI Act.

16. Under such circumstances, the reasoning of the learned Judge, which are based on sympathy, cannot be sustained in law and the order is set aside.

17. The decisions cited by Mr. Banerji are on the point of the alternative remedy that was available to the auction purchaser to challenge the forfeiture, and the restraint to be employed by a writ court in entertaining such challenge. The Hon'ble Apex Court held that, whenever a challenge was thrown against an order of forfeiture made by an authorized

officer under Rule 9(5) of the said Rules by a bidder who had failed to deposit the entire sale price within 90 days, the tribunals and courts should be extremely reluctant to interfere unless a very very exceptional case for interference was set up.

18. The guarantor sought to intervene in the proceeding, in order to bring on record the decision of the Hon'ble Apex Court in the matter of Swadha Builders Private Limited & Ors. vs. Union Bank of India & Ors., in Petition for Special Leave to Appeal No.10761 of 2026. Mr Mukherjee has supplied us a copy of the same. At this stage, the decision of Hon'ble Apex Court does not affect our order.

19. Under such circumstances, we are of the view that the remedy of the auction purchaser was not before the writ court but was before the DRT-3. All steps and actions of the bank are undoubtedly subject to the result of the proceedings before the DRT as also the suit.

20. Accordingly, the appeal and the connected application being CAN 1 of 2023 are disposed of.

21. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)