

**BEFORE THE DEBTS RECOVERY  
APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Misc. Appeal No. 96/2017**

**Between**

Central Bank of India

... Appellant/s

V/s.

Pushpa Shamrao Raykar

... Respondent/s

Mr Meghnath Navlani, Advocate for Appellant.

Mr Sanjay Anabhawane, i/b Mr Nikhil Salvi, Advocate for Respondent.

**AND**

**Misc. Appeal No. 111/2017**

**Between**

Central Bank of India

... Appellant/s

V/s.

Prashant Raosaheb Shinde

... Respondent/s

Mr Meghnath Navlani, Advocate for Appellant.

S.R. Page, Advocate for Respondent.

**AND**

**Misc. Appeal No. 54/2019**

**Between**

Central Bank of India

... Appellant/s

V/s.

Prashant Raosaheb Shinde

... Respondent/s

Mr Meghnath Navlani, Advocate for Appellant.

S.R. Page, Advocate for Respondent.

**AND**

**Misc. Appeal No. 55/2019**

**Between**

Central Bank of India

... Appellant/s

V/s.

Pradeep Sopan Gawade

...Respondent/s

Mr Meghnath Navlani, Advocate for Appellant.

S.R. Page, Advocate for Respondent.

**:- Common Order dated: 31/07/2023:-**

These Misc. Appeals are filed by the Central Bank of India impugning the orders in four Misc. Applications filed as M.A. Nos. 11, 12, 13 and 14 of 2016 under Sec. 19(25) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('RDDB & FI Act', for short) by the successful auction bidders of four flats put up for auction sale by the Appellant Bank for the realisation of debt due from the debtor, M/s. Atharva Trading Pvt. Ltd. The bidders participated in the auction and deposited the earnest money (EMD) and also 25% of the bid amount in consequence of their being declared as the highest bidders. Because of a stay ordered by the D.R.T. in the interlocutory application Exh-8 filed by a third-party claimant namely M/s Dinesh Construction in S.A. No. 170 of 2014, and as the bank agreeing not to confirm the sale till the application was disposed of, the confirmation of the sale got delayed. On getting permission from the D.R.T. to confirm the sales, the Appellant Bank requested the Respondents to

deposit the balance 75% of the sale amount. The Respondents failed to do so resulting in the 25% of the sale amount deposited by them earlier being forfeited. The Respondents were aggrieved and approached the D.R.T. with the above-mentioned four Misc. Applications for refund of the amount paid by them. The Ld. Presiding Officer vide orders dated 03.03.2017 allowed all the applications and directed refund of the amounts to the Applicants. Aggrieved, the Appellant Bank is in appeal against each of those orders. Since the facts are similar except for the difference in the amounts for which the flats were bid, the appeals are disposed of by a common order.

2. As a consequence of the default in repayment of the debt due from M/s Atharva Trading Pvt. Ltd., the Appellant Bank proceeded to recover the outstanding dues from the borrower. Flat Nos. 18 and 19 on the 3rd Floor of Maurya Classic, Kothrud, Pune and Flat Nos 1-21 and 1-22 of Maurya Vihar, Kothrud, Pune being the secured assets were put for sale vide sale notice published on 13.08.2014 in 'Financial Express' and 'Loksatta' dailies. The Respondents responded to the sale notice by expressing their willingness to bid in the auction of the aforesaid properties. On 26.08.2014 M/s Dinesh Construction, the claim applicant in Exh-8 published a caution notice in the aforesaid two newspapers mentioning the fact regarding a dispute being sub-judice before the D.R.T., Pune.

3. On 11.09.2014, the aforesaid M/s Dinesh Construction filed an application Exh-8 in S.A. No. 117 of 2014 to stall the auction. The Appellant bank agreed not to confirm the sale till the disposal of the

application. Thereafter, in the sale that was conducted on 16.09.2014, the Respondents became successful highest bidders concerning the four properties. The very next day, apart from the EMD the balance to constitute 25% of the sale consideration was also deposited by the respective Respondents. On 26.09.2014, all the Respondents requested that the amounts deposited by them be kept in fixed deposits. On 07.03.2015, the Respondents addressed the Appellant Bank to demand a deposit of the balance 75% of the bid amount. On 17.04.2015, the Appellant Bank approached the D.R.T. and the Id. Presiding Officer permitted the sale to be confirmed in favour of the Respondents. On 05.05.2015, the Appellant Bank requested the Respondents to pay the balance of 75% of the bid amount on or before 19.05.2015. The Respondents sought some clarification regarding the CBI Investigation pending in the matter. The Respondent in Misc. Appeal No. 55 of 2019 sought permission from the bank to make the payment of 75% only after getting satisfied with the clear marketable title of the subject property. The Appellant Bank provided all the documents to the Respondent and clarified the issue regarding the CBI Investigation vide letter dated 18.05.2015. On 01.06.2015, in consequence of the auction bidders not depositing the balance sale consideration, 25% of the bid amount deposited by each of the Respondents was forfeited.

4. Respondents in Misc. Appeal No. 54 and 55 of 2019 had on 22.09.2015 sent notices to the Appellant, to which the bank sent its response on 7.10.2015. The subject properties in Misc. Appeal No. 54 of 2019 and 55 of 2019 were re-auctioned on 07.12.2016 while

properties in Misc. Appeal No. 96 of 2017 and 111 of 2017 were re-auctioned on 23.07.2016.

5. The common question that arises for consideration in these appeals is whether the Appellant was justified in forfeiture of the sale amount including the EMD deposited by the Respondents. The Ld. Presiding Officer observed that the Appellant did not inform the auction purchasers about the stay ordered by the D.R.T. preventing the bank from confirming the sale. The secured assets were also re-auctioned subsequently. Hence the D.R.T. directed a refund of the deposit made by the auction purchasers.

6. The Ld. Counsel appearing for the Appellant bank submits that the D.R.T. went wrong in directing a refund of the amount deposited by the auction purchasers. It is submitted that the confirmation of sale got delayed because the stay order granted by the D.R.T. pending disposal of application Exh.-8 filed by a 3<sup>rd</sup> party namely M/s Dinesh Constructions. Even prior to the auction sale, the auction purchasers were aware of the said application filed by the intervening party. A caution notice was also published in the very same newspapers by the intervenor in which the auction notice was also published. It is further pointed out that in the resale that took place, all items of properties were sold for a much lesser price than the price at which they were sold to the Respondents. It is pointed out that the property in Appeal No. 111 of 2017 which is flat No. I-22 bid by the Respondent therein for a sum of ₹28,08,889/- was sold in re-auction for ₹24.05 lakhs only. Flat No. I-21 which is a subject matter of Appeal No. 96 of 2017 and bid in auction by the Respondent for ₹30,27,777/- was sold in the re-

auction four ₹24.11 lakhs only. The subject matter in Appeal No. 50 of 2019 which is flat No.18 was sold in auction to the Respondent therein for ₹41,09,999/-but in re-auction, it was sold for only ₹24.05 lakhs. Similarly, flat No. 19 which is a subject matter in Appeal No. 55 of 2019 was originally sold to the Respondent auction purchaser for ₹45,05,045/-fetched a price of only ₹24.05 lakhs in re-auction. It is also submitted that though the Appellant bank had raised a question of limitation and maintainability of the Misc. Applications filed by the Respondents, the D.R.T. committed an error in holding that an application under section 19(25) of the RDDB & FI Act was maintainable and relied upon the decision of the Division Bench of Bombay High Court in *Umang Sugars Pvt. Ltd. vs. State of Maharashtra & Anr.* 2014 (4) Mh. L. J. 113 to substantiate its finding. The Ld. Counsel submits that the Hon'ble Supreme Court had in *Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank and Ors.* (2018) 1 SCC 626 overruled the decision in *Umang Sugars* (supra) on the point that an auction purchaser can maintain a writ petition challenging the order of the D.R.T. refusing to refund the EMD and 25% of the sale consideration deposited by the auction purchaser. It was held by the Hon'ble Supreme Court that an auction purchaser can maintain a petition under only section 17 (1) of the SARFAESI Act to challenge the forfeiture of the purchase money. The Ld. Counsel submits that under Rule 9 (5) of the Security Interest (Enforcement) Rules, 2002, in default of payment within the period mentioned in sub-rule (4) the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit to the secured creditor all claim to

the property or any part of the sum for which it may be subsequently sold. The Ld. Counsel points out that the bank had to, ultimately sell the flats at a much lesser price than for what they were bid by the Respondents.

7. Per contra, the Ld. Counsel appearing for the Respondents points out that the auction purchasers were never informed about the pendency of an application challenging the sale and the fact of D.R.T. granting a stay with regard to confirmation of the sale. The Ld. Counsel relies on a catena of decisions in support of his argument that it was the duty of the authorised officer under Rule 8 (7) (f) of the Rules to disclose the fact regarding the pendency of any litigation or encumbrance over the property which was being put up for public auction. The Ld. Counsel relies on the decision of the Hon'ble Allahabad High Court (Lucknow Bench) in *Smt. Rekha Sabu vs. UCO Bank & Ors.* 2013 SCC OnLine All 13203, the decision of the Andhra Pradesh High Court in *Mr Madhava Krishna Chaitanya vs. UCO Bank, Asset Management Branch* 2018 SCC OnLine Hyd 196, the decision of the Madras High Court in *K. Senthil Kumar vs. The General Manager & Ors* W.P. No. 13269 of 2016, the decision of the High Court of Karnataka in *Shri. Sharath K.S. vs. Union Bank of India* W.P. No. 11602 of 2019, the decisions of the Hon'ble Supreme Court in *Mathew Varghese vs. M. Amritha Kumar & Ors.* (2014) 5 SCC 610 and *Mohd. Shariq vs. Punjab National Bank & Ors* 2023 LiveLaw (SC) 308 in support of his arguments.

8. On considering the rival contentions raised by the Ld. Counsel appearing for the parties and on perusal of the documents and records,

as also the reported decisions relied upon, this Tribunal comes to the conclusion that the impugned orders passed by the Ld. Presiding Officer are not sustainable for the following reasons:

The auction notices were published on 13.08.2014 for the sale to be conducted on 16.09.2014 in two newspapers namely 'Financial Express' and 'Loksatta'. The intervenor M/s Dinesh Constructions had published a caution notice in the very same newspapers on 26.08.2014. In case the auction purchasers had participated in the auction by responding to the notices published in the newspapers by the bank, there is no possibility that they could have missed out on the caution notice that was published by the intervenor. Exh.-8 was filed by the intervenor subsequent to the sale notice. Hence, it was not possible for the Appellant bank to have mentioned the fact regarding the intervenor's claim over the property. The Ld. Presiding Officer had permitted the auction sale to proceed. The confirmation was subject to the decision taken in the intervention application. It is pertinent to note that consequent to the deposit of the EMD and the 25% of the auction price, the auction purchasers had requested the bank to invest the money in fixed deposits in view of the stay granted by the D.R.T. This, would indicate that the auction purchasers were keen on proceeding with the sale despite having knowledge of the stay. Thereafter, the Respondents also requested the bank to demand a deposit of the balance sale consideration. The decisions relied upon by the Ld. Counsel appearing for the Respondents can be distinguished on facts. In most of the decisions, there was suppression of facts, and the encumbrances on the properties sold in auction were



not revealed to the bidders. Rule 8 (7) (f) only states that the sale notice shall include any other terms and conditions, which the authorised officer considers necessary for the purchaser to know the nature and value of the property. In the instant case, it cannot be said that the auction purchasers were not aware of the intervention application that was filed or the consequent interim stay granted by the D.R.T. In the decision *Mohd. Shariq* (supra) the Hon'ble Supreme Court directed a refund of the deposit forfeited by the bank on a different set of facts. The auction purchaser therein was willing to proceed with the sale, though belatedly and to prove his bona fide he had deposited the balance of 75% which, was more than the amount for which the property was re-auctioned. The facts and the instant case are different. The auction purchasers herein did not deposit the balance 75% of the sale price after they were informed about the D.R.T. proceeding to dismiss the intervention application and permitting the authorised officer to confirm the sale. It is only after the auction purchasers were granted an opportunity to pay the balance bid amount that the properties were put up for re-auction. The bank had to sustain a loss by selling the properties at a much lesser price than what they were bid for by the Respondents.

9. The Ld. Presiding Officer was therefore not justified in directing the Appellant bank to refund the purchase money deposited by the Respondents. The impugned orders are therefore to be interfered with in appeal.

Resultantly, the appeals are allowed and the impugned orders are all set aside and Misc. Applications Nos. 11, 12, 13 and 14 of 2016 are

dismissed. The forfeiture of the amounts deposited by the Respondents is justified and need not be refunded.

Sd/-  
Chairperson

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