

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 2166 of 2022

**Avlokan Commosales Private Limited
and another
Vs.
State Bank of India and another**

For the petitioners : Mr. Siddhartha Mitra, Sr. Adv.
Mr. Raibat Banerji, Adv.
Ms. Natasha Roy, Adv.

For the respondents : Mr. Joy Saha, Sr. Adv.
Mr. Sarvesh Chandra Shrivastava, Adv.
Mr. Somnath Chattopadhyay, Adv.
Mr. Samir Kumar Das, Adv.

Hearing concluded on : 04.07.2023

Judgment on : 14.07.2023

The Court:-

1. The petitioner no.1 participated in an auction sale held by the respondent no.1-State Bank of India (SBI). The SBI initially did not execute any Sale Certificate in favour of the petitioner no.1. Upon repeated communications by the petitioners in that regard, the petitioners sought for refund of the consideration money paid by them for such sale. The Bank initially took a stand in writing that the concerned Tribunal, that is, the Debts Recovery Tribunal (DRT)-1, Kolkata, in its order dated August 7, 2018 passed in SA No.168 of 2018, had directed the Bank not to issue Sale Certificate and that no

further steps shall be taken till hearing the disposal of the SA. By such communication dated October 12, 2018, the Bank further wrote to the petitioners that since the petitioners had requested the refund of the bid amount along with interest and other charges with compensation, the matter was sub judice before the DRT and shall be put up before the said Forum to seek appropriate direction.

- 2.** Upon the petitioner no.1 writing a further letter on December 31, 2019, reiterating the petitioners' claim for refund of the bid amount, totalling Rs.55,19,250/- along with interest at the rate of 15 per cent per annum from the date of payment by the petitioner till actual payment, with cost of DD charges amounting to Rs.15,912.30p, the Bank wrote back on January 14, 2020 indicating that it was under process of assigning the loan account of the borrower Sancheti Electronics Limited to one Phoenix ARC Private Limited and would inform the petitioner to take up the matter with Phoenix once the deed of assignment was executed. Subsequently, the loan account was apparently assigned to Phoenix.
- 3.** Learned senior counsel appearing for the petitioner argues that the e-auction, in which the petitioners were successful as bidders, was held under the SARFAESI Act, 2002 by the SBI, consequent upon the default in payment of loan by the debtor Sancheti Electronics. On March 1, 2022, the Tribunal recorded the settlement between Sancheti with Phoenix, to whom the debt was assigned by the SBI on January 20, 2020.

4. On March 28, 2022 a purported Sale Certificate was issued by Phoenix in favour of the writ petitioners, referring therein to the settlement between Phoenix and the corporate debtor Sancheti. In May 2022, the petitioners filed the present writ petition and an order was passed on May 17, 2022 observing that the sale had become infructuous by virtue of a settlement dated March 1, 2022 and the writ petitioners were entitled to refund of money. The petitioners primarily rely on the said order and a subsequent order dated June 15, 2022 where, in an application by the SBI for review of the May 17, 2022 order, the said application was dismissed.
5. On August 26, 2022, an appeal was filed by the SBI against the orders dated May 17, 2022 and June 15, 2022 (rejecting the review application). The appeal was disposed by the Division Bench without interfering with the said orders of the learned Single Judge. On the prayer of SBI, time was extended to deposit the amount as directed by the order dated May 17, 2022.
6. It is submitted that after the said order of the Division Bench, the direction as to refund has attained finality.
7. In fact, the SBI conceded to the same and prayed for extension of time to deposit the amount, thereby complying with the order dated May 17, 2022. The SBI, in such compliance, had deposited the principal amount of Rs.87,11,644 with the Registrar of the High Court. The application made by Phoenix to be added as a party to the writ petition was dismissed by a co-ordinate Bench, against which an appeal is pending and no interim order has been passed.

- 8.** The allegation of Phoenix regarding suppression of purported Sale Certificate dated March 28, 2022 issued by Phoenix, in the writ petition, it is argued, was considered by the Division Bench and, despite such consideration, the order of the learned Single Judge was not interfered with. SBI, and not Phoenix, was directed to make the deposit with the Registrar.
- 9.** In view of the observation of the learned Single Judge that the sale has become infructuous, the Sale Certificate issued in the present case loses relevance. The case of *B. Arvind Kumar Vs. Government of India and others* [(2007) 5 SCC 745], cited by the SBI is sought to be distinguished on such score.
- 10.** The SBI, even after declaring its inability to transfer the property, is now resiling from the position that they are bound to refund the amount.
- 11.** Having taken advantage of the Division Bench order, the SBI has already sought for extension of time to deposit the amount directed by the Trial Judge on May 17, 2022. In fact, the application of Phoenix to be added as a party was also turned down by a co-ordinate Bench.
- 12.** It is argued that as per Section 65 of the Contract Act, when an agreement is discovered to be void or when a contract becomes void, any person who had received any advantage under such agreement or contract is bound to restore it or to make compensation to the person from whom he received it. By relying on such principle, it is argued that the petitioner is entitled to refund of such amount along with interest.

- 13.** Learned senior counsel for the SBI, on the other hand, submits that the Sale Certificate issued on March 28, 2022 was duly served upon the petitioner on the same date via e-mail. However, the said fact was suppressed in the writ petition. In the affidavit-in-reply, the petitioners denied receiving the Sale Certificate without, however, making any comment on the e-mail which *ex facie* proves that such denial is false.
- 14.** The suppression being material and deliberate, the petitioner should be dismissed. On such score, learned senior counsel for the Bank cites *Amar Singh Vs. Union of India and others, reported at (2011) 7 SCC 69*.
- 15.** A Sale Certificate is a document of transfer of title, it is argued, and does not require any further conveyance. In support of such submission, *B. Arvind Kumar (supra)* is cited.
- 16.** Learned senior counsel for the Bank next contends that a Sale Certificate issued by a court or authorized by a court does not require registration, as per the said judgment. For such contention, learned senior counsel also relies on *Shakeena and another Vs. Bank of India and others, reported at (2021) 12 SCC 761*.
- 17.** The SBI heavily relies on the Sale Certificate, which tantamounts to finalization of the conveyance to the petitioner. As such, the sale has crystallized and no further payment can be made. It is further argued that the petitioners have not prayed for cancellation of the sale deed, which is a valid document of transfer. In the absence of the same, the refund claimed by the petitioners is bad in law.

- 18.** It is also argued by the SBI that the writ petitioner is not maintainable, since, by the order dated July 16, 2021 passed in WPA No.199 of 2021, the matter was sent to the DRT. As this Court sent back the matter to the Tribunal, it amounts to the observation that the issues arising out of the sale should be decided by the Tribunal. Consequently, the second writ petition is not maintainable.
- 19.** There is no doubt, it is argued, that the subject-matter of the present writ petition could be decided by the Tribunal under Section 17 of the SARFAESI Act. An alternative remedy being available, the writ petition should not be entertained. For such proposition, learned senior counsel for the petitioner cites *United Bank of India Vs. Satyawati Tondon and others, reported at (2010) 8 SCC 110*.
- 20.** The order dated July 16, 2021 is also relied on by the SBI, where the court held that the Tribunal has jurisdiction and was to dispose of SA No.168 of 2008. It was made clear that in the event the sale is set aside, the petitioners shall be entitled to interest on the sum of Rs.55,19,250/- from the date of deposit of the same. Thus, it is apparent that the same, if not set aside, would stand confirmed and there would be no question of refund of money. No appeal was preferred from the said order dated July 16, 2021. The sale was never set aside by the Tribunal. On the contrary, the sale certificate has been issued and no refund can now be claimed by the petitioners.
- 21.** Although the order dated July 16, 2021 provided that the petitioners' grievance could be addressed by the Tribunal, the petitioners deliberately failed to raise the issues involved in the writ petition

before the said Tribunal and, as such, cannot agitate the same afresh by filing a second writ petition.

- 22.** It is lastly argued by the SBI that the letter of the Bank stating inability to take steps due to the DRT Order was dated October 12, 2018. The letter by the petitioner demanding repayment with interest was dated December 31, 2019. WPA No.199 of 2021, the previous writ petition was filed only in July, 2021. Thus, between October 12, 2018 and July 2021, for a period of almost three years, no steps were taken, or any proceeding instituted, by the petitioners. Thus, the petitioners waited for the decision of the DRT, in respect of the challenge to the same and were willing to accept the property if the sale was not set aside.
- 23.** Hence, it is argued that the present writ petition ought to be dismissed.
- 24.** It is clear from the chronology of events that the auction sale was held on August 2, 2018.
- 25.** The entire amount of consideration of Rs.55,19,250/-was paid by the petitioners by three drafts. The first such draft was dated July 25, 2018, the second, August 3, 2018 and the third, August 14, 2018.
- 26.** It is relevant to mention that upon the borrower Sancheti having applied for setting aside the Sale Notice, which was registered as SA No.168 of 2018, the Presiding Officer of the DRT-I, Kolkata, *vide* order dated August 7, 2018, restrained the respondent-Bank that is, the SBI from issuing Sale Certificate and taking further steps till hearing and disposal of the SA.

- 27.** Hence, the last tranche of the consideration amount was received by the SBI seven days after the order of injunction.
- 28.** The petitioners have consistently been asking for issuance of Sale Certificate, possession and original title deeds/agreements up to September 6, 2018. The bank, for the first time in its communication dated September 14, 2018, intimated the petitioners about the restraint order dated August 7, 2018.
- 29.** Thereafter, on October 10, 2018, the petitioners sought for refund of their bid amount, together with interest at the rate of 15 per cent per annum and cost of DD charges amounting to Rs.15,912.30p.
- 30.** The Bank, on October 12, 2018, communicated to the petitioners that since the matter was sub judice before the DRT-I, Kolkata, the Bank would put up the matter before the said Forum to seek proper direction in the matter. Again, on December 31, 2019, the petitioners wrote to the Bank, referring to a meeting held with the authorized officer of the Bank on December 17, 2019 where it was virtually confirmed that suitable action would be taken by Bank within a month. The petitioners reiterated their request for refund of the bid amount with interest and DD charges.
- 31.** The SBI, on January 14, 2010, replied to the petitioners' letter dated December 31, 2019 and took the plea that the Bank was under process of assigning the loan account of Sancheti to Phoenix ARC Private Limited.
- 32.** However, the Bank did not commit anything regarding the refund.

- 33.** An Advocate's letter was next given by the petitioner to the Bank on August 4, 2020, reiterating their claim of refund, interest and other charges.
- 34.** On August 14, 2020, the communication dated August 4, 2020 was reiterated.
- 35.** Meanwhile, the petitioners preferred WPO No.199 of 2021, which was decided on July 16, 2021 by directing the Tribunal to dispose of "SA No.168 of 2008" and put up the petitions in connection therewith within two months from the date of communication of a copy of the said order. It is made clear, by a co-ordinate Bench order, that in the event of the sale being set aside, the petitioners shall be entitled to interest on the said sum of Rs.55,19,250/- from the date of deposit of the said amount with the SBI till the actual date of refund at the prime lending rate of the Bank or as may be determined by the DRT in accordance with law.
- 36.** *Vide* order dated July 27, 2021, a correction was duly recorded in the order of the co-ordinate Bench, amending "SA 168 of 2008" as "SA 168 of 2018".
- 37.** A conspicuous turn of events took place on March 1, 2022, when an amicable settlement was reached between the borrower Sancheti and the Bank in SA 168 of 2018. The said SA was disposed of in view of amicable settlement between the parties, recording that the SARFAESI applicant (borrower) duly accepted the OTS amount of Rs.3,65,00,000/- and deposited the same with the respondent-Bank,

in consonance with the offer of the SBI and sanction by it of the OTS to the borrower by the Bank's letter dated August 21, 2021.

- 38.** Thus, the intention of the Bank to avoid its liability towards the present petitioners is clear from the said developments. In the order recording amicable settlement, the SBI had it recorded conveniently, to suit its purpose, that SA No.168 of 2018 was disposed of under the category of "amicable settlement". It was further added by the Tribunal that it was not certified as to merit or demerit of the case.
- 39.** Such finding itself is rather dubious, since the same would be otherwise unnecessary, unless specifically recorded at the instance of the parties thereto, that is, the borrower and the Bank, to avoid the consequence of the sale being 'set aside', which would attract the mischief of the co-ordinate Bench order saddling the bank with the liability of paying interest.
- 40.** Such recording has to be taken in proper perspective.
- 41.** On July 16, 2021, a co-ordinate Bench of this Court disposed of the petitioners' writ petition being WPO No.199 of 2021, where the Bank was a party, which recorded that "in the event of the sale being set aside, petitioners shall be entitled to interest on the said sum of Rs.55,19,250/- from the date of deposit of the said amount with the State Bank India till the actual date of refund, at the Prime Lending Rate of the Bank or as may be determined by the Debts Recovery Tribunal in accordance with law".
- 42.** It was recorded in the order dated March 1, 2022, whereby SA No.168 of 2018 was disposed of by amicable settlement, that during the

pendency of the SA, the respondent-Bank had offered and sanctioned the OTS to the borrower by letter dated August 21, 2021, which led to the amicable settlement.

- 43.** Thus, the said letter dated August 21, 2021 was hurriedly issued by the Bank, after about one month from the order of the co-ordinate Bench dated July 16, 2021, under which the Bank was under duress to refund the entire amount of consideration, along with interest, to the petitioners in the event the sale was set aside.
- 44.** Taken in conjunction, the aforesaid developments clearly show the *mala fides* adopted by the Bank in its conduct, insofar as, upon the cloud of payment of interest being cast on it if the sale was set aside, it hurriedly issued a letter accepting the OTS proposal and sanctioning it by the same letter dated August 21, 2021 and had the Tribunal record the disposal of SA No.168 of 2021 by “setting aside the sale”, but on “amicable settlement”, further going to the extent of observing that it was “not certified as merit or demerit of the case”, in a bid to avoid any finding that the sale was set aside.
- 45.** However, the chronology of events makes such attempt of the Bank transparent and obvious.
- 46.** In any event, the expression used by the co-ordinate Bench in its order dated July 16, 2021 was, “in the event of the sale being set aside” and not, “in the event SA No.168 of 2018 is allowed”.
- 47.** The moment the SBI accepted the proposal of OTS (One Time Settlement) of the borrower and the borrower paid the amount, which was received by the Bank, the automatic effect in law was that the

auction sale which was being geared up to be conducted in favour of the petitioners got nullified.

- 48.** Since the genesis of the sale was the non-payment of the loan taken by the borrower Sancheti, the moment the loan was repaid in terms of the OTS, the sale automatically fell through, thereby leaving no option for the petitioners but to be satisfied with refund of the money paid for the sale.
- 49.** In any event, no Sale Certificate could have been issued during the relevant period, since there was a specific restraint order passed by the Tribunal on August 7, 2018. The said order clearly restrained the respondent-Bank from issuing the Sale Certificate and from taking further steps till the hearing and disposal of the SA. The hearing and disposal of the SA, although by amicable settlement, took place only on March 1, 2022 and, as such, any Sale Certificate which was purportedly issued during such period was null and void *ab initio*. Moreover, the purported Sale Certificate sought to be relied on by the Bank was not issued by the Bank, which was the vendor in the auction sale and the creditor, but one Phoenix ARC Private Limited, to which the Bank had allegedly assigned the loan of the borrower.
- 50.** Thus, the net effect of the entire transactions was that the Bank had assigned the loan of the borrower to Phoenix, in a transaction in which the present petitioners were not parties and, as such, were not bound by the same.
- 51.** Moreover, under the SARFAESI Act and Rules, it is the creditor, that is, the Bank, which undertook the auction sale and confirmed the

sale, was to execute the Sale Certificate in favour of the purchaser, that is, the petitioner no.1. Phoenix, being a third party assignee of the Bank, did not acquire any right to unilaterally execute such Sale Certificate with regard to the auction sale. In the least, the Bank was also a necessary party to the sale certificate and Phoenix could, as an assignee, be a confirming party thereto.

- 52.** That being not so, the purported Sale Certificate issued on March 28, 2022, that too, in the teeth of the restraint order from issuing such Sale Certificate, by Phoenix alone was palpably *de hors* the law and irregular as well as illegal.
- 53.** Such Sale Certificate, thus, was *void ab initio*, being in contravention of a restraint order, and, on the grounds as indicated above, cannot be given effect to at all.
- 54.** Thus, for all practical purposes, the Sale Certificate having not been issued in due process of law to the petitioners, the auction sale never went through or was finalized. Thus, there is no scope of further “setting aside” of such sale, which was never finalized in the true sense of the term.
- 55.** Taking the spirit of the order of the co-ordinate bench dated July 16, 2022, for all practical purposes, it is to be deemed that the sale never went through due to the conduct of the Bank in accepting the OTS after the order of the co-ordinate Bench from the borrower and taking the amount in terms of such OTS.

- 56.** Hence, there cannot be any doubt that the Bank is liable to pay interest on the sum of Rs.55,19,250/- as per the spirit of the direction dated July 16, 2021 passed in WPO No.199 of 2021.
- 57.** Insofar as the interest thereon is concerned, the SBI has already deposited the entire amount, to the tune of Rs.55,19,250/-, together with interest at the rate of 14 per cent per annum from the date of deposit on July 25, 2018 and in proportion to the amounts deposited from time to time thereafter with the Registrar, Original Side of this Court in terms of the order dated May 17, 2022 passed in the present writ petition. In such view of the matter, the said amount ought to be disbursed to the petitioner in its entirety, along with the interest accrued thereon. Since the Registrar, Original Side maintained the said amount in an interest bearing deposit account with automatic renewal, the claim of interest of the petitioners till date of receipt of the amount is satisfied.
- 58.** Accordingly, WPO No.2166 of 2022 is allowed, thereby directing the Registrar, Original Side to release the entire amount as deposited by the respondent-Bank with the Registrar, Original Side pursuant to the direction dated May 17, 2022 passed in the present writ petition, along with interest accrued thereon, to the petitioners and/or their duly authorized representative, within one month from date upon withdrawal of the same from the account where the same has been deposited. Such disbursement of the amount by the Registrar, Original Side to the petitioners, however, shall be subject to deduction of all statutory deductible amounts payable to the Registrar, Original Side

for having rendered the necessary services in depositing such amount and ancillary expenses.

59. There will be no order as to costs.
60. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)

Later:

Learned counsel for the respondents, after delivery of the judgment, seeks a stay of operation of the above judgment and order for eight weeks. In order to enable the respondents to prefer an appeal, stay of operation of the above judgment and order is granted for a period of thirty days from date.

(**Sabyasachi Bhattacharyya, J.**)