

\$~19

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: 29<sup>th</sup> October, 2021

+

**CM(M) 684/2021 & CM No.35081/2021 (for Stay), CM No.38650/2021 (delay of 2 days in filing rejoinder)**

FRANCO LEONE LIMITED AND ORS

..... Petitioners

Through: Mr. Kirti Uppal, Senior Advocate  
with Mr. Sidharth Chopra, Mr.  
Navneet, Mr. Aditya Awasthi and Ms.  
Riya Gulati, Advocates.

versus

PUNJAB AND SIND BANK

..... Respondent

Through: Ms. Seema Gupta, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**[VIA VIDEO CONFERENCING]**

**AMIT BANSAL, J. (Oral)**

1. The present petition under Article 227 of the Constitution of India impugns the auction notice dated 1<sup>st</sup> September, 2021 and consequential proceedings emanating therefrom under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. Brief facts leading up to the filing of the present petition are that the petitioner no.1 (petitioner company), of which petitioners no. 2 to 4 are directors, availed various credit facilities from the respondent bank. To avail such credit facilities, the petitioner company had mortgaged 12 properties

*CM(M) 684/2021*

*Page 1 of 7*

with the respondent bank. On 31<sup>st</sup> March, 2018, the account of the petitioner company was declared to be Non Performing Asset (NPA) and a demand notice dated 5<sup>th</sup> May, 2018 was issued to the petitioners by the respondent bank under Section 13(2) of the SARFAESI Act, calling upon the petitioners to make payment of Rs.46,13,45,410.39/-. The petitioners, from 26<sup>th</sup> October, 2018 to 31<sup>st</sup> February, 2020, sought permission of the respondent bank to sell a few of the properties to repay their dues. Finally, on 24<sup>th</sup> February, 2021, the petitioners proposed a One Time Settlement (OTS) payment of Rs.30,00,00,000/- in respect of their dues. In the meanwhile, consequent to the respondent bank taking steps under Section 13(4) of the SARFAESI Act to take possession of the mortgaged properties, the petitioners, vide letter dated 29<sup>th</sup> November, 2018, handed over possession of property bearing no. 11786/6, Ground Floor, Sat Nagar, Karol Bagh, New Delhi-110005. Vide letter dated 23<sup>rd</sup> August, 2021, the respondent bank requested the petitioners to improve their OTS proposal to match it with the Recovery Management Policy of the bank. In response to the letter by the respondent bank, the petitioners requested a copy of the bank policy to improve their offer, however, the respondent bank issued the impugned auction notice dated 1<sup>st</sup> September, 2021 to sell 8 out of the 12 mortgaged properties of the petitioners.

3. The present auction notice was challenged by the petitioner by way of filing a Securitization Application, being SA No.119/2021 before the Debts Recovery Tribunal-II (DRT) on 24<sup>th</sup> September, 2021. Notice on the said application was issued to the bank, returnable for 27<sup>th</sup> September, 2021. On 27<sup>th</sup> September, 2021, the Presiding Officer was on leave and the matter was

adjourned to 1<sup>st</sup> October, 2021. The term of the Presiding Officer ended on 30<sup>th</sup> September, 2021.

4. Since there was no Presiding Officer available on 1<sup>st</sup> October, 2021, the petitioner filed the present petition. The petition was listed before this Court on 5<sup>th</sup> October, 2021, when it was adjourned for 6<sup>th</sup> October, 2021, for parties to verify whether or not the DRT has a Presiding Officer to hear the aforesaid SA, when both the parties confirmed that currently there is no Presiding Officer at any of the Debt Recovery Tribunals in Delhi.

5. Notice was issued in the present petition on 06<sup>th</sup> October, 2021 and it was directed that the respondent bank could auction the two properties that are subject matter of the present petition, however, the sale conformation was not to be carried till the next date of hearing. Reply and rejoinder have been filed and both counsels for parties were heard on 28<sup>th</sup> October, 2021 and 29<sup>th</sup> October, 2021.

6. It is contended by the learned senior counsel appearing on behalf of the petitioner that Rule 8(6) and Rule 8(7) of the Security Interest (Enforcement) Rules, 2002, which are mandatory in nature, have not been complied with. Reference in this regard has been made to the judgment of the Supreme Court in *Mathew Varghese v. M. Amritha Kumar and Ors.* (2014) 5 SCC 610, to contend that individual notice under Rule 8(6) has to be given to the borrower and the said provisions are mandatory. Relying upon the aforesaid judgment, it is submitted that no individual notice in the present case has been sent to the petitioner. He further states that the auction notice dated 01<sup>st</sup> September, 2021 nowhere provides the time and place of auction. Even though there is a reference in the aforesaid auction notice to certain newspapers as enclosures, however, the same has not been supplied

to the petitioner.

7. Next, senior counsel for the petitioner has drawn my attention to the letter dated 23<sup>rd</sup> August, 2021 of the respondent bank, whereby the One Time Settlement (OTS) proposal on behalf of the petitioner of Rs.30,00,00,000/- was rejected and the petitioner was advised to make a better offer. In response, the petitioner vide letter dated 31<sup>st</sup> August, 2021 asked the respondent Bank to furnish its policy so that the petitioner could make a better offer. The said policy referred to in the letter dated 31<sup>st</sup> August, 2021 was never provided to the petitioner.

8. *Per contra* the counsel appearing on behalf of the respondent bank has drawn attention of this Court to various documents to show that:

- (i) the total outstanding amount as on date is more than Rs.72,43,00,000/-, as noted in the auction notice;
- (ii) the petitioners have admitted their account to be NPA vide letter dated 31<sup>st</sup> August, 2021 and that they would be required to sell the properties to repay the outstanding amount and therefore, the petitioner could not have any objection to the respondent bank holding a public auction in which the petitioner or any other person could also participate;
- (iii) the petitioners themselves had handed over the possession of the Karol Bagh property to the respondent bank, as evidenced from the communication dated 29<sup>th</sup> November, 2018. Accordingly, the petitioners cannot have any objection to the aforesaid properties being auctioned;
- (iv) the total loan sanctioned to the petitioner was for a sum of Rs.44,70,00,000/- which was secured by way of mortgage of 12 properties, out of which 8 were put for auction and only in respect of two properties,

bids have been received by the respondent bank, namely, properties located at Karol Bagh and Noida;

(v) the auction notice specifically notes that the newspaper publications in Financial Express and Jansatta were enclosures to the aforesaid notice. The relevant portions of the aforesaid newspapers with regard to the said publication have also been filed with the reply, which gives full detail in respect of time, place and date of the auction. The aforesaid newspaper publication was duly sent to the petitioner along with the sale notice;

(vi) it has been admitted in the petition that the auction notice was received on 04<sup>th</sup> September, 2021 and nowhere has it been stated that the aforesaid notice was without enclosures; and,

(vii) Sale banner was also affixed at the two properties in question at Karol Bagh and Noida and at the residential premises of the petitioners in Meera Bagh.

9. Attention of this Court has also been drawn to details of the e-auction proceedings, whereby the highest bids of Rs.42,48,000/- in respect of the Karol Bagh property and Rs.2,83,65,000/- in respect of the Noida property have been received, whereas the petitioner has offered only Rs.1,72,51,000/- in respect of the Noida property. Both the aforesaid bids are in excess of the reserved price fixed by the respondent bank in respect of the aforesaid properties.

10. The present petition is being entertained only on account of the non-functioning of the DRT and the urgency of the relief sought.

11. Having heard the counsels for the parties and having gone through the record, this Court is not inclined to interfere with the auction process carried out by the respondent bank.

12. There is merit in the contention of the respondent that all mandatory provisions of the SARFAESI Act and the rules framed thereunder have been fully complied with by the respondent bank. There is no reason to disbelieve the respondent bank that the auction notice along with the enclosed newspapers was duly sent to the petitioners 30 days before the auction date. The petitioners themselves in paragraph (v) of the petition, at page 17 of the electronic file has admitted that the impugned auction notice dated 01<sup>st</sup> September, 2021 was received by the petitioner on 04<sup>th</sup> September, 2021, which was more than 30 days before the proposed auction date. Counsel for the petitioner has contended that the said notice was not accompanied by the newspapers as the date, time and place of the auction was provided in the said newspaper and not in the aforesaid notice. However, counsel for the respondent bank is correct in her submission that if that were the case, then the petitioner ought to have protested about the non-receipt of the enclosures, since the sale notice specifically mentioned the enclosures.

13. The photographs filed by the respondent bank along with its reply clearly demonstrate that the sale banners containing the time, date and place of auction were duly affixed not only at the properties in question but also at the residential premises of the petitioners. Therefore, the judgment in *Mathew Varghese* (supra) would not come to the aid of the petitioner in the present case.

14. The fact of the matter is that when the petitioners did not have the financial resources to repay the bank and wanted to sell the properties in question to repay the loan of the respondent bank, the petitioners cannot object to the auction conducted by the respondent bank in respect of the



aforesaid properties. If the petitioners so desired, they could have participated in the auction. However, the fact remains that they did not participate in the auction and the price which they were willing to offer in respect of the said properties was much less than the price fetched in the auction.

15. As regards the ground taken with respect to non-receipt of the OTS policy, the counsel for the respondent bank has contended that the said policy is not a public document and the bank is not bound to disclose the same. Yet, the relevant portions of the said policy has been reproduced in the reply filed by the respondent bank before this Court, wherein it is stated that the objective of the policy is to receive maximum amounts that can be recovered from the borrower. In the present case, as per the respondent bank, the amount due currently is more than Rs. 74,00,00,000/-. The sale of the aforesaid two properties would recover only a sum of Rs.3,26,00,000/-. I am also informed that after the conclusion of the hearing on 28<sup>th</sup> October, 2021, a fresh OTS proposal was made on behalf of the petitioners to the respondent bank. Counsel for the respondent bank, on instructions states that the said proposal has been rejected by the bank as the same was well below the amount due.

16. In view of the above, no grounds for interference are made out. The petition along with the accompanying applications are dismissed.

17. Interim order passed on 6<sup>th</sup> October, 2021 stands vacated.

**AMIT BANSAL, J.**

**OCTOBER 29, 2021**

dk

*CM(M) 684/2021*

*Page 7 of 7*