

Sanjay Kumar vs Central Bank Of India on 8 May, 2020

Author: Rekha Palli

Bench: Rekha Palli

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 08.05.2020

+ W.P.(C) 3067/2020 & CM APPL. Nos.10669/2020, 10670/2020 & 10671/2020

SANJAY KUMAR Petitioner
Through: Mr.Awnish Kumar, Adv.

versus

CENTRAL BANK OF INDIA Respondent
Through: Mr.Shadab Khan, Adv. with
Ms.Swarnima Singh, Law Officer.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition has been taken up for hearing through video conferencing.
2. The present petition under Articles 226/227 of the Constitution of India, preferred by a successful bidder in an e-auction conducted by the respondent Bank on 31.03.2020 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), seeks directions to the Bank to issue a sale certificate in favour of the petitioner as also for condonation of the five days' delay occasioned in depositing the requisite amount with the Bank, in terms of the bid.
3. The present dispute arises out of an e-auction conducted under the SARFAESI Act for the sale of an industrial property situated at Plot No. 34, Block-B, Sector-63, Phase III, Noida U.P. admeasuring 800 sq.mtr. ('the auction property' in short). The petitioner and his two brothers are the owners of M/s Kartik Real Nest Services ('the firm' for short), a real estate partnership firm having its office in Sector 63, Noida, U.P. As per the public notice for the e-auction published on 14.03.2020 in the Hindi daily 'Jansatta', the auction took place on 31.03.2020 between 11AM and 1PM at a reserve price of Rs.4.25 crores. The firm, having met all the eligibility criteria prescribed in the notice, bid a sum of Rs. 4.3 crore for purchase of the auction property. Once the auction had drawn to a close, the firm received an e-mail from the respondent Bank at 1:52 PM on 31.03.2020

informing them that their bid was successful and that they were required to deposit 25% of the bid amount, i.e., a sum of Rs. 1,07,50,000/- with the respondent Bank within a period of 24 hours. As the firm, in accordance with a pre-condition of the auction, had already deposited a sum of Rs. 42.5 lakhs with the respondent Bank as earnest money, it needed to deposit only a further sum of Rs. 65 lakhs with the Bank by 01.04.2020.

4. Although the bids were invited on 14.03.2020, by the time the auction actually took place a nation-wide lockdown on account of the COVID-19 pandemic was already in place w.e.f. 24.03.2020. Consequently, the firm found it difficult to crystallise the necessary funds within this short period of 24 hours; it informed the Bank of its situation vide its email sent at 5:06 PM on 31.03.2020 and requested for an extension of time to deposit the balance amount by 10-12 days. This email also stated that in case the respondent had any objections to grant of such extension, then the petitioners may be immediately informed of the same by way of a reply to the email. When this email went unanswered, the firm proceeded on the understanding that the Bank had acceded to its request to extend the period to deposit the amount by 10 to 12 days. Subsequently, in terms of the respondent's demand dated 31.03.2020, the firm deposited the requisite balance amount with the Bank by 06.04.2020 in the following tranches:

| Date of deposit | Amount |
|-----------------|-------------|
| 02.04.2020 | Rs. 5 lakh |
| 03.04.2020 | Rs. 44 lakh |
| 04.04.2020 | Rs. 10 lakh |
| 06.04.2020 | Rs. 6 lakh |

5. Pursuant to the deposit of the monies as required under the auction terms, the respondent Bank was approached by the firm for issuance of the sale certificate, which it assured the petitioner would take place shortly and that the delay was only owing to the shortage of staff on account of the lockdown. However, since the petitioner neither received a reply to its representations nor was it issued the sale certificate, despite having sent a reminder e-mail to the Bank on 23.04.2020, the present writ petition has been filed.

6. Issue Notice. Learned counsel for the respondent accepts notice and submits that he does not wish to file any reply.

7. Accordingly, with the consent of the learned counsel for the parties, the petition is taken up for final disposal.

8. In support of the petition, learned counsel for the petitioner submits that the petitioner's actions are completely bonafide and were a result of the helplessness and logistical difficulties brought about by the lockdown. In fact, during the period pertaining to the facts of the present petition, the lockdown had just been introduced and had triggered a great deal of confusion even amongst the banks on their mode of operation. He submits that the firm had duly informed the Bank of its difficulty in rounding up the requisite finances, by way of its email, which went completely

unanswered. He further submits that even then the petitioner hurried to make these payments without any unnecessary procrastination, and despite the bank holidays which fell within this period (on 2nd and 6th April 2020), the petitioner managed to make the complete payment to the Bank within five days. He prays that in these circumstances, the respondent Bank be directed to condone the delay of five days occasioned by the firm in depositing the full amount, finalise the auction bid in its favour and issue a sale certificate in its name.

9. Learned counsel for the respondent Bank does not dispute that during the period with which the present petition is concerned, the banks were still attempting to understand the parameters of its functions within the national lockdown, and that there was a sudden and severe shortage of on-duty bank staff which implied that communication channels were still not entirely operational. He submits that the firm's email sent at 5:06 PM on 31.03.2020 had indeed been received by the Bank on time. In light of the above, he submits that he has no objection to the petitioner's prayer for condonation of five days' delay in depositing the requisite amounts with the Bank. However, with respect to prayer (a) of the petition seeking issuance of sale certificate in the petitioner's name, by placing reliance on the order dated 17.04.2020 passed by the learned Debt Recovery Tribunal-III, Delhi in SA No. 207/2019 and SA Dy. No. 1794/2019, he submits that the learned Tribunal is already seized of the matter. He submits that these applications, moved by one Mr. Kailash Mehendiratta and a firm named KSJ & Co. respectively, challenge the auction in question claiming to have bought the auction property, prior to the auction, from its original owners. This challenge is still under consideration before the Tribunal which has, while directing the applicants to deposit the sale consideration with it, declined to confirm the auction in favour of the firm till further orders. Even though this decision of the Tribunal was challenged before this Court, the learned Division Bench, vide its order dated 24.04.2020, rejected the challenge to the direction for deposit of sale consideration and granted further time to the applicants to comply therewith. In these circumstances, while the matter remains pending before the Tribunal, learned counsel for the respondent submits that the Bank is not in a position to confirm the sale or issue the sale certificate in favour of the petitioner. He, therefore, submits that for confirmation of sale and issuance of sale certificate, the petitioner be directed to approach the learned Tribunal in the pending applications, instead of this Court.

10. I have heard the submissions of learned counsel for the parties and have perused the record.

11. From the submissions made at the Bar, it is evident that the parties are ad idem that when these developments were taking place, which included the day when the e-auction was conducted and the subsequent five days of delay, the nationwide lockdown was already in place and the movements and activities of all enterprises and persons across the country had been severely curtailed. It is also undisputed that when the e-auction was conducted, the banking sector was yet to arrive at a clear understanding of its functioning during the national lockdown to clear which, not only the Central Government but also the RBI issued circulars and notifications from time to time. The petitioner did not/does not deny its statutory liability to pay within the period of 24 hours prescribed in Rules 9(3) and 9(4) of Security Interest (Enforcement) Rules 2002, and has consistently maintained the position that it remains bound to pay the respondent Bank. It had even moved a timely application to the Bank seeking an extension of time to deposit the required monies. Moreover, it is admitted

that the firm made continuous deposits of the required amount in tranches during this five day period of delay revealing that as and when the firm was able to collect any substantial amount, it hastened to deposit the same with the Bank without any further delay and consequently concluded the payments within five days. On the other hand, the Bank has admitted to a lapse in communication channels during this period and to having received the email sent by the firm at 5:06 PM on 31.03.2020. The Bank has further expressed its lack of objection to condoning this delay of five days occasioned by the petitioner in making the deposit.

12. In my view, these are undoubtedly extraordinary times that we are living in. Out of all the sectors of the economy bearing the weight of this pandemic, the banking sector has been one of the hardest hit. The Reserve Bank of India, the apex financial institution of the country, remains cognisant of the consequences of this pandemic upon individual households and institutional borrowers as also their struggle to make timely payments. In order to minimise the effect of the pandemic and to alleviate the hardships faced by all kinds of borrowers, it has granted a ninety day long moratorium on payments and issued numerous circulars laying down guidelines for the banking and finance sectors. The Courts have also kept up with these circumstances by taking the effect of the national lockdown into account while dispensing justice. In recent cases, the Supreme Court as well as the High Courts have weighed in the prevalent circumstances while exercising their discretionary powers to assuage the concerns and hardships of enterprises and persons. Today, there is a clear and urgent need for the Courts to dispense justice with equity. In fact, the Courts have taken suo moto cognisance of the difficulties triggered by the pandemic while granting reliefs, as evident from the decision of the Supreme Court in *In Re : Cognizance for Extension of Limitation S.M.W.P (C) No. 3/2020* on 23.03.2020.

13. Against this backdrop and in the facts of the present case, the petitioner has convinced this court that the delay occasioned was bonafide, unintentional and a result of the chaos brought on by the announcement of the national lockdown. While condoning the delay, I am cognisant of the fact that in principle and statute, the deadlines prescribed in banking and financial laws require strict interpretation. However, in view of the delay in question only being of 5 days, which cannot be deemed as inordinate, and the exceptional nature of prevailing circumstances, I am of the view that the delay deserves to be condoned. In any event, the Bank also does not seriously object to the prayer for condonation of the five-day delay period in depositing the amount. Even otherwise, the applications under the SARFAESI Act pending before the Tribunal and pertaining to the auction property, were not filed until 17th April 2020, which was 11 days after the petitioner had already deposited the remaining amount with the Bank. Thus, the auction being challenged before the Tribunal cannot also be a valid ground to reject the petitioner's prayer for condonation of delay. Even the decision of the Division Bench dated 24.04.2020 clarifies that the deposit made by the persons challenging the auction shall neither create any equities nor create any fresh rights in their favour. Therefore, the delay of five days occasioned by the petitioner in depositing the remaining amount to the Bank stands condoned.

14. However I find merit in the respondent's submission that at this stage, when a challenge to the e-auction in question remains pending before the learned Tribunal, neither would the Bank be permitted nor would it be proper for this Court to delve into the petitioner's second prayer seeking

confirmation of the auction and issuance of a sale certificate in its favour. In the light of this position, while learned counsel for the petitioner does not press this prayer, he does pray for liberty to approach the learned Tribunal with this prayer by way of an appropriate application in this regard. Keeping in view the fair stand taken by the petitioner, this Court grants liberty to the petitioner to approach the learned Tribunal and seek the reliefs as set out in prayer

(a) of the present petition. It is made clear that this Court has neither examined this issue nor expressed any opinion thereto and the learned Tribunal shall consider the same on its own merits by keeping in mind that the delay occasioned in depositing the required amount by the petitioner stands condoned by this Court.

15. The writ petition along with the pending applications stands disposed of.

16. The judgment be uploaded on the website forthwith. A copy of the same be also forwarded to the learned counsel through email.

REKHA PALLI, J MAY 08, 2020 gm