

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on 20.08.2010

W.P.No.11294(W) of 2010
Dr. Subrata Majumder

-vs-

United Commercial Bank & Ors.

Points:

Scope of Writ: As per condition of auction sale the part of sale price paid by the petitioner was forfeited for failure to pay the balance price within the stipulated period-Whether writ maintainable-Constitution of India Art 226

Facts:

The petitioner's father-in-law borrowed money from the Bank. Since he was in default on the loan the Bank proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took steps for auction sale. The petitioner participated and was the highest bidder. After depositing a part of the sale price he did not pay the balance thereof. Under the circumstances, according to terms of the sale, the Bank forfeited the deposited amount, issued notice for a fresh auction sale and sold the property to another person.

Held:

According to the terms and conditions of the auction sale, the petitioner was to pay the balance of the purchase price within the stipulated period, and his failure was to lead to forfeiture of the amount he had deposited. Admittedly, the petitioner failed to deposit the balance within the stipulated period, and accordingly the Bank forfeited the amount he had deposited and sold the property for the second time. There is no reason to say that the Bank has committed any wrong.

Paras 6 and 7

Mr. Manas Kumar Ghosh

....for the petitioner

Mr. Sailesh Mishra

...for the Bank

The Court : The petitioner in this art.226 petition dated May 20, 2010 is seeking the following principal relief :

“(a) A writ of and/or in the nature of Mandamus directing the concerned respondent authorities to consider the case of the petitioner allowing some time to acquire sufficient fund to save guard the right, title and interest over the said property.”

2. The petitioner’s father-in-law borrowed money from the Bank. Since he was in default on the loan the Bank proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took steps for auction sale.

3. The petitioner participated and was the highest bidder. After depositing a part of the sale price he did not pay the balance thereof. Under the circumstances, according to terms of the sale, the Bank forfeited the deposited amount, issued notice for a fresh auction sale and sold the property to another person.

4. Counsel for the petitioner submits that this is a mercy petition. He prays for a mandamus commanding the Bank to give the petitioner some time so that the petitioner may pay the balance of the purchase price or alternatively to refund the amount the petitioner deposited.

5. The High Court under art.226 does not have a mercy jurisdiction, and hence just out of sympathy a mandamus cannot be issued.

6. According to the terms and conditions of the auction sale, the petitioner was to pay the balance of the purchase price within the stipulated period, and his failure was to lead to forfeiture of the amount he had deposited.

7. Admittedly, the petitioner failed to deposit the balance within the stipulated period, and accordingly the Bank forfeited the amount he had

deposited and sold the property for the second time. There is no reason to say that the Bank has committed any wrong.

8. The petitioner is not entitled to any relief from the Writ Court.

9. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)