

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1599 OF 2011

PRABHAT GENERAL AGENCIES & ORS.

Appellant(s)

VERSUS

THE JAMMU AND KASHMIR BANK LTD. & ORS.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal takes exception to the judgment and order dated 30.09.2009 passed by the High Court of Judicature at Bombay in Writ Petition No. 8412 of 2009; whereby challenge set forth by the appellants to the sale of the mortgaged property in question of the appellants by the respondent-Bank, has been negated.

The appellants have questioned the auction process *inter alia* on the ground that the land, mortgaged to the respondent-Bank was only 550 marlas, but possession of 784.5 marlas is being handed over to the respondent Nos.3 and 4 who have purchased the same in the sale by the Bank. This argument need not detain us in view of the stand taken by the respondent-Bank. According to the respondent-Bank and the said respondents, the land in

question is undivided and 550 marlas of land will be given to them after it is demarcated. In other words, the sale in favour of respondent Nos.3 and 4 is only in respect of 550 marlas of land. Thus, after demarcation of 550 marlas of land the same will be made over to them. The appellant can participate in the process of demarcation, if so advised.

The principal contention regarding the auction process is that reserve price was fixed at Rs. 5.50 crores, but the sale in favour of private respondent Nos.3 and 4 is only for Rs. 4.50 crores. In other words, it is below the reserve price. It is next contended that the auction process was in contravention of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Further, the sale certificate was issued in favour of the private respondent even before the entire amount was realized from him. More importantly, the offer of auction purchaser was received after the last date of tender notified in the advertisement.

All these contentions are founded on an erroneous assumption that the land is transferred in favour of respondent Nos.3 and 4 in reference to the public auction notification issued on 16.10.2004. The record, however,

indicates that the said process did not fructify. As a result of which, the respondent-Bank had no other option but to resort to another method of disposal (private sale) of the mortgaged land. Before initiating that process, the appellants were duly informed by the Bank on 13.11.2004 vide Annexure P-10; and were given opportunity to deposit the outstanding dues. The appellants did not avail of that opportunity. As the Bank finally sold the land in question by adopting private sale method, the grounds urged by the appellants to assail the auction process or the sale certificate in favour of respondent Nos.3 and 4 being in violation of Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002, cannot be countenanced. The fact remains that the appellants despite repeated opportunity given by the Bank had not been able to discharge the obligation and pay the outstanding dues.

Even during the course of argument, we had called upon the appellants to make a suitable offer. In response thereto, a proposal has been submitted. That proposal is not acceptable to the respondents. As the outstanding amount is not forthcoming nor the appellants are in a position to settle the claim of the respondent

Nos.3 and 4, who have invested around Rs. 4.50 crores as back as in the year 2005, the respondent Nos. 3 and 4, due to the pendency of these proceedings, they have not been able to enjoy the property so far.

Taking overall view of the matter, especially repeated opportunities and failure of the appellants to make any payment, we are not inclined to interfere in this appeal in the fact situation of the present case.

Although, the appeal is dismissed, the respondent-Bank must ensure handing over of only 550 marlas of land in question to respondent Nos. 3 and 4, after proper demarcation to be done in the presence of the appellants, from the larger property admeasuring 784.5 marlas. If the appellants fail to cooperate, the Tehsildar of the concerned village(s) may do so in the presence of independent witnesses. That process be completed within eight weeks from today.

As regards the claim of the I.A. applicant-Central Bank, it will be open to the Central Bank to pursue remedy, as may be permissible in law.

Pending applications, if any, stand disposed of.

.....J

(A.M. KHANWILKAR)

.....J
(SANJIV KHANNA)

New Delhi
July 09, 2021

Mr. Siddharth Dey, Adv.
Mr. P. V. Yogeswaran, AOR

Ms. Abha R. Sharma, AOR

Mr. Mahesh Thakur, AOR

M/S. J S Wad And Co.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]