

ORDER

Leave granted.

The appellant-Bank issued Sale Notice under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 (for short "the SARFASI Act") inviting sealed tenders in the newspaper 'Rashtriya Sahara' on 3rd September, 2008. The respondent being the highest bidder of House No.356/340/754, situated at Ashok Vihar, Alam Nagar, Lucknow, was declared as the successful bidder. The sale was confirmed through letter dated 15th October, 2008. The balance amount of the sale price had to be deposited by the respondent within 15 days i.e. on or before 31st October, 2008. It was also provided that in case the balance amount is not deposited within 15 days the entire deposit paid by the bidder shall be forfeited.

...2/-

:2:

The respondent through letter dated 15th October, 2008 accepted the aforesaid terms and promised to make the balance payment by 31st October, 2008. The respondent, however, failed to perform his part of the agreement. The appellant Bank issued a letter on 12th May, 2011, requesting the respondent to deposit the remaining amount along with interest at Bank's PLR latest by 31st May, 2011. Even at this stage the respondent made a request that he requires a further period of 15 days for arranging the balance payment by letter dated 31st May, 2011. Again on 14th June, 2011, the respondent sought further 10 days' time and undertook to pay the entire balance amount between 22nd June, 2011 and 25th June, 2011. The appellant Bank in its letter dated 30th June, 2011, informed the respondent that in view of the default committed by the respondent, it had no other alternative but to forfeit the amount already deposited and put the property to sale through auction. Therefore, the respondent was directed to deliver vacant possession of the premises. By letter dated 27th July, 2011, the appellant-Bank informed the respondent that the Bank had forfeited the deposit already made by the respondent and

...3/-

:3:

demanded vacant possession of the premises within 7 days from 27th July, 2011.

At this stage, the respondent moved the High Court of Allahabad, Lucknow Bench by way of writ petition seeking permission to deposit the balance amount in eight quarterly instalments and direct the Bank not to dispossess the respondent from the peaceful possession of the property. The High Court dismissed the writ petition with the following observations:

"Property in question was given in auction purchase to petitioner on 15.10.2008 but till date he has not cleared the sale consideration, which according to learned Counsel for Bank should ordinarily have been paid within a period of thirty days. After a gap of about three years now the petitioner has come with a proposal for granting liberty to deposit the money. If the property is put on auction today, it may fetch a huge amount looking to its location.

Thus, we dismiss the writ petition with liberty to Bank to conduct fresh auction within a period of one month from the date of receiving a copy of this order. In case the Bank does not do it within the time frame, the Manager of the Bank shall be proceeded against for causing loss to the public exchequer. It is also directed that the earnest money, if any, deposited by the petitioner shall be refunded with interest at prevailing rate within a period of one week from today."

...4/-

:4:

It is this order of the High Court which is impugned in the present appeal.

Mr. M.T. George, learned counsel appearing for the appellant-Bank has submitted that the High Court having directed that the appellant Bank to conduct fresh auction wrongly directed that the earnest money deposited by the respondent be refunded to him with interest at the prevailing rate within a period of one week. It is submitted by Mr. George that since the earnest money has been forfeited, no claim would possibly lie in favour of the respondent to seek refund of the amount. We accept the submission made by Mr. George. Since the earnest money had already been forfeited, no direction could possibly have been given to refund the same to the respondent. The appeal is partly allowed and the aforesaid direction with regard to refund of earnest money with interest is set aside.

No costs.

.....,J.
(SURINDER SINGH NIJJAR)

.....,J.
(FAKKIR MOHAMED IBRAHIM KALIFULLA)

NEW DELHI
AUGUST 30, 2013