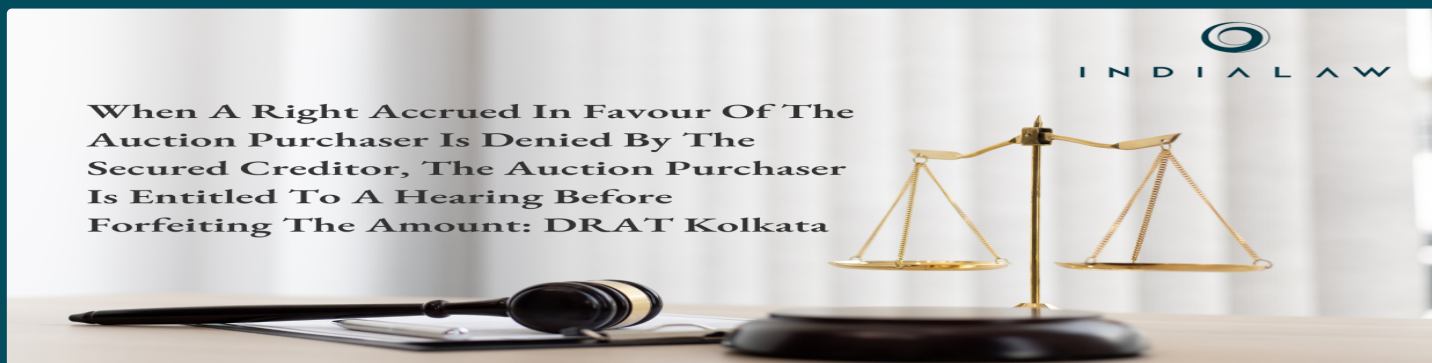




DEBT RECOVERY

When A Right Accrued In Favour Of The Auction Purchaser Is Denied By The Secured Creditor, The Auction Purchaser Is Entitled To A Hearing Before Forfeiting The Amount: DRAT Kolkata

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The Hon'ble Debt Recovery Appellate Tribunal, Kolkata comprising of Justice Anil Kumar Srivastava in Punjab National Bank Vs. held that when the right of forfeiture under [Rule 9\(5\) of Security Interest \(Enforcement\) Rules, 2002](#) is exercised by the Secured Creditor after the lapse of stipulated period of three months, then the Auction Purchaser should be given an opportunity of hearing.

Table of contents

- [Facts Of The Case](#)
- [Contentions Of The Parties](#)
- [Findings Of The Court:](#)

Facts Of The Case

The Respondent, Bikash Saha is the Auction purchaser (hereinafter referred to as the Respondent) who participated in the e-auction sale conducted on 29th June 2021 in response to the sale notice dated 4th June 2021 published by the Appellant bank. Subsequently, an amount of 10,00,250/- was deposited on 30th June, 2021. Accordingly, total amount of Rs. 21,63,250/- was deposited which represented 25% of the bid amount. The Respondent was directed to deposit the remaining 75% of the auction sale latest by 14th July 2021. However, the Respondent sought time to make the remaining payment. The Appellant Bank denied the aforementioned requests.

In accordance with the Rule 9(5) of the Security Interest (Enforcement) Rules, 2002, the Appellant Bank notified the Respondent via letter dated 8.11.2021 of the forfeiture of the amount.

The Respondent challenged the aforesaid action of the Bank before the Hon'ble DRT, Siliguri wherein it was held that the forfeiture in question is legally invalid and directed the Bank to refund the 25% of the deposited amount after making deduction of Rs. 50,000 for expenses related to the subsequent auction sale.

The Appellant Bank has challenged the said order by way of this appeal.

Contentions Of The Parties

The Learned Counsel for the Bank submitted that the Respondent has submitted a deposit amounting to 25% of the bid, indicating their acceptance of all the terms and conditions outlined in the auction sale. This establishes a legally binding contract, wherein it is explicitly stated that failure to make the required deposit will result in forfeiture of the deposited amount.

The Learned Counsel for the Respondent argued that the letter dated 8.11.2021, which resulted in the forfeiture of the bid money, was not directly communicated to the Respondent. Instead, it was attached to an email sent on 3.12.2021. The Bank had already issued a new sale notice on November 19, 2021, which is also against the provisions of law.

Findings Of The Court:

The Appellate Tribunal observed that the Hon'ble DRT heavily relied on the Apex Court judgment in the matter of [Alisha Khan vs Indian Bank](#),^[1] wherein the order to forfeit the 25% deposit of the auction sale amount was set aside.

It was observed that the secured creditor has the right under Rule 9 (5) of the Security Interest Rules to forfeit the amount deposited by the Auction Purchaser and thereafter re-sell the property within a stipulated period of time , not exceeding three months.

Nevertheless, the Secured creditor did not forfeit the amount upon expiry of three months period. It was observed that no answer was offered to the auction purchaser's application dated 2.11.2021, and the sum was forfeited on 8.11.2021, which the Bank conveyed via email on 3.12.2021. This demonstrates that the secured creditor did not show sufficient vigilance in exercising its right of forfeiture.

The DRAT held that when right arises in favour of the Secured Creditor and if it is not exercised within the stipulated time, it indicates that the Secured Creditor has waived its right of forfeiture after the lapse of three months from the date of deposit. When the Secured Creditor chooses to waive a right, a corresponding right is acquired by the Auction Purchaser. Thereafter, when the right of forfeiture, under Rule 9 (5) of the Rules, is exercised by the Secured Creditor after the lapse of three months, then the Secured Creditor is required to provide an opportunity of hearing to the Auction Purchaser and the principle of "Audi

Alteram Partem” would be made applicable.

Moreover, the Bank could not provide any justification for its failure to forfeit the 25% deposited amount in accordance with law. Hence, it can be inferred that the Appellant Bank waived its right accrued under the Rule 9 (5) of the Rules.

The Appellate Tribunal placed reliance on *State of Punjab vs Davinder Pal Singh Bhullar*^[ii], wherein it was held that “Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them.”

Further, the DRAT relied on *GM Sri Siddeshwara Co-operative Bank Limited & Anr. Vs Sri Ikbali & Ors.* ^[iii] case, asserting that even when a provision is mandatory in nature, it can always be waived by a party for whom the provision was made. This principle was reaffirmed by the Apex Court in the matter of *Vasu P. Shetty vs Hotel Vandana Palace & Ors*^[iv].

The Hon'ble DRAT noted that the Secured creditor, being a Nationalised Bank, had knowledge of its rights but failed to exercise them in accordance with law and rather waived off the right to forfeiture.

Accordingly, the present appeal was dismissed and the Order dated 05.07.2022 passed by the Hon'ble DRT, Siliguri was upheld.

^[i] 2021 SCC Online SC 3340

^[ii] [(2011) 14 SCC 770]

^[iii] [(2013) 10 SCC 83]

^[iv] [(2014) 5 SCC 660]