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Court : DRAT Madras

Decided On : Nov-18-2005

Reported in : II(2006)BC148

Judge : K Gnanaprakasam

Appellant : Ramsons Garment Finishing

Respondent : Small Industries Development

Judgement :

1. This appeal has arisen this way. It appears that during the pendency of the OA, an advocate commissioner was appointed to bring the properties listed in the OA, in auction, and accordingly the advocate commissioner fixed the date of auction on June 29, 2005. The appellant was one of the participants in the auction. The appellant and several others have sent their offer in a sealed cover and all the covers were opened on June 29, 2005, i.e., on the date of auction. It is stated that the appellant had quoted Rs. 34 lakhs as the offer amount. M/s.

Progressive Associates, who is impleaded as the fourth respondent in this appeal, also took part in the auction and submitted their offer in a sealed cover for Rs. 20 lakhs. Other offers in the sealed covers were less than these offers. The Advocate Commissioner having opened the covers, found that Rs. 34 lakhs offered by the appellant was the highest one and fixed the said price as the base price and put the property in open auction. That in the said process, one Mr. Rajeswar Rao of M/s. Sri Rajarajeswari Steel Traders, bid for an amount of Rs. 35,50,000 and he

was declared as the successful bidder in the auction held on June 29, 2005 and he was directed to deposit 25 per cent, of the said amount within 24 hours as could be seen from the proceedings of the advocate commissioner, which is available at page 2 of the typeset of papers filed by the first respondent-bank. The advocate commissioner filed another memo dated July 4, 2005, which is available at page 3 of the same typeset of papers, wherefrom it is made out that Mr. Rajeswar, the successful bidder deposited a sum of Rs. 9,60,000 towards compliance of the condition of deposit of 25 per cent, of the bid amount and he undertook to deposit the balance amount on or before July 14, 2005. Subsequently, the advocate commissioner by his letter dated July 19, 2005, addressed to the appellant herein stating that Mr.

Rajeshwar failed to deposit the balance amount, hence the preliminary sale in his favour was set aside. If the appellants are willing to accept the said bid amount, they are called upon to deposit a sum of Rs. 35,50,000 by way of demand draft or bankers cheque in favour of "The Registrar, D. R. T. Hyderabad". Accepting the offer made by the advocate commissioner, the appellant by its letter dated July 25, 2005, sent a demand draft for Rs. 35,50,000 favouring the Registrar, DRT, Hyderbad. On receipt of the entire sale consideration from the appellant, the advocate commissioner by his letter dated July 25, 2005, sent a letter of confirmation of sale informing, "in pursuance of auction on June 29, 2005, and your letter dated July 25, 2005, the plant and machinery belonging to M/s. Saaf Laundromat P. Ltd. is sold to you and hereby acknowledged that you have paid a sum of Rs. 35,50,000 towards full sale consideration by way of DD enclosed to your letter dated July 25, 2005. You are hereby directed to lift the machinery within 15 days from today, in the absence of any agreement with the land lady in relation to lease agreement in your favour.

Please make it convenient to attend panchanama proceedings on July 26, 2005, at 3.00 pm for preparation of list of items being handed over to you". The advocate commissioner sent a similar letter to the respondent-bank also : Subsequently, it appears that without any notice or order, the demand draft of Rs. 35,50,000 which was sent by the appellant, in favour of the Registrar, DRT, Hyderabad, was returned without even any covering letter and on receipt of the same, the appellant

addressed letter to the PO of DRT, Hyderabad, on August 4, 2005, marking a copy to the advocate commissioner wherein it is stated that subsequent to the confirmation of sale in favour of the appellant by the advocate commissioner, the demand draft has been returned to the appellant without any authority and the cancellation of sale was protested and the demand draft was also received under protest. It appears that the advocate commissioner has further advertised for the sale of the property in auction sale to be held on August 12, 2005. As against the cancellation of the confirmation of sale in favour of the appellant and also bringing the property in a fresh auction, the appellant has preferred this appeal.

2. During the pendency of the appeal, M/s. Progressive Associates have filed an application to implead themselves in the appeal and the appellants as the first respondent have agreed that the said application may be allowed without prejudice to their rights and contentions and the said petition was allowed subject to their objections.

4. The learned advocate for the appellant would contend that in response to the auction sale, which was scheduled to be held on June 29, 2005, the appellant and several persons have sent their offer by sealed covers. As per the directions of the advocate commissioner, all the covers were opened on the date of auction and the appellant's offer of Rs. 34 lakhs was the highest. But however, the advocate commissioner wanted to put the property in open auction fixing the offer amount of the appellant as the base price and one Mr. Rajeswar Rao had offered Rs. 35,50,000 and, therefore, the advocate commissioner confirmed the sale in his favour. As Mr. Rajeswar Rao failed to deposit the amount as directed by the advocate commissioner, sale in his favour was cancelled and as the appellant had offered Rs. 34 lakhs in the sealed cover, which was the highest offer, the Advocate Commissioner sent a letter to the appellant to offer his acceptance if he is willing to purchase the property for the very same price of Rs. 35,50,000 and the appellant also accepted the offer and also sent the demand draft for the entire amount and after having accepted the offer made by the appellant, the advocate commissioner also confirmed the sale in favour of the appellant and sent a letter of confirmation of sale on July 25, 2005, and called upon the appellant to lift the machinery also and directed the respondent-bank also to be present on July 26,

2005, to hand over the machinery to the appellant. That in the meanwhile, without any reason or rhyme, the advocate commissioner seems to have cancelled the sale in favour of the appellant and the demand draft was returned to the appellant and the same was received by the appellant under protest and the same was intimated to the Advocate Commissioner and also to the Debts Recovery Tribunal. The learned advocate for the appellant submits that no reason has been adduced either by the advocate commissioner or by the Debts Recovery Tribunal for the cancellation of confirmation of sale in favour of the appellant. It is further submitted that the advocate commissioner having confirmed the sale, he has become functus officio, and the sale cannot be set aside. It is further pointed out that the Debts Recovery Tribunal has also not passed any order on intimation to the auction purchaser cancelling the sale. Even if any order has been passed either by the advocate commissioner or by the Debts Recovery Tribunal against the bank or the appellant, the same is not binding upon the appellant.

5. The learned advocate for the impleading party, i.e., the fourth respondent, namely, M/s. Progressive Associates, would state that though his offer in the sealed cover was only Rs. 20 lakhs, in the open auction held on June 29, 2005, he had offered Rs. 35,40,000 and, therefore, he was the highest bidder in the auction held on June 29, 2005. If for any reason, the advocate commissioner had chosen to cancel the auction in favour of Mr. Rajeswar Rao, the Commissioner should have chosen the next highest bidder, i.e., the impleading party, and opportunity should have been given to the fourth respondent to purchase the property and such an opportunity was not given and, therefore, the sale if any, made in favour of the appellant is not valid.

6. The learned advocate for the first respondent-bank argued in favour of the fourth respondent by submitting that the fourth respondent was the second highest bidder and he should have been given an opportunity to make his offer and instead of doing so, the offer made to the appellant is not proper. In this connection, they have also referred to the letter dated July 25, 2005, sent by the bank to the advocate commissioner, wherein they have stated the very same thing.

7. After having heard all the parties, the fact that the auction took place on June 29, 2005 and the appellant had offered Rs. 34 lakhs in the sealed cover and the fourth respondent had offered Rs. 20 lakhs and the sealed covers were opened and the advocate commissioner put the property in open auction and in the said auction one Mr. Rajeswar Rao bid the property for Rs. 35,50,000 are not in dispute. The said Rajeswar Rao after having deposited the initial amount failed to comply with payment of balance of the sale consideration and, therefore, the sale in his favour was cancelled and the advocate commissioner gave an offer to the appellant to purchase the property for the very same price of Rs. 35,50,000 and the appellant also accepted the said offer and after having acknowledged the said offer, the appellant had sent demand draft for the entire amount and the same was accepted and the Advocate Commissioner also issued confirmation of sale letter on July 25, 2005.

After having confirmed the sale in favour of the appellant, is it open to the Advocate Commissioner to cancel the sale unilaterally without putting the appellant or other party on notice. On going through the records, the Debts Recovery Tribunal has not stipulated or formulated any conditions for sale of the property in auction. But however, the advocate commissioner was directed to conduct the auction, as he deems fit and proper. That only in the said circumstances, it appears that the advocate commissioner has called for the offer in sealed covers and thereafter, conducted the open auction and the said procedure was not questioned by either of the parties and, therefore, as far as that procedure is concerned, I do not incline to take it for consideration in this appeal and to give a finding also. But the fact remains that the property was sold for a sum of Rs. 35,50,000 and the auction purchaser did not comply with the conditions as stipulated by the advocate commissioner and, therefore, the auction in favour of Mr.

Rajeswar Rao was cancelled and the advocate commissioner himself had offered to sell the property for the appellant and the same was also accepted by the appellant and he had also sent the entire amount by way of demand draft and the same was also accepted. After having accepted the sale consideration, the Advocate Commissioner also issued confirmation of sale letter and that thereafter,

it appears that the sale in favour of the appellant was also cancelled. Admittedly, no reason has been given by the advocate commissioner nor by the Debts Recovery Tribunal. To cancel the sale, there must be some basis or reason and here no reason has been given for the cancellation of the confirmation of sale in favour of the appellant. In fact, the appellant should have been put on notice before cancellation, by giving opportunity to meet the said cancellation and such an opportunity was not given to the appellant also. Common law and natural justice requires, that no prejudicial order could be passed without hearing a person. Here is a case where the sale which was confirmed in favour of the appellant was cancelled without any notice to the appellant and, therefore, I am of the view that such cancellation is impermissible under law and such cancellation of the sale is liable to be set aside.

8. To meet the contention/argument of the fourth respondent, it could be seen that the fourth respondent has not questioned the proceedings of the advocate commissioner either before the Debts Recovery Tribunal or before this Tribunal. When he came to know of the present appeal, he wanted to implead himself in this appeal. If at all the fourth respondent had any grouse, he should have ventilated the same before the Debts Recovery Tribunal by questioning the proceedings of the advocate commissioner, which he has not chosen to do so. In this connection, the argument advanced on behalf of the appellant could also be recalled that the fourth respondent had offered only Rs. 20 lakhs in the sealed cover, but whereas he made higher offer of Rs. 35,40,000 in the open auction, the difference appears to be more than 50 per cent, of the offer made by him in the sealed cover and, therefore, it is argued on behalf of the appellant that the fourth respondent is only a chance bidder. It may not be necessary to render a finding on that aspect except to take into account that the offer made by the fourth respondent was less in the sealed cover and the offer made in the open auction was more than 1 1/2 times of the offer in the sealed cover.

That apart, the fourth respondent has not chosen to assail the proceedings of the advocate commissioner and, therefore, he cannot seek any relief in this appeal. In this connection, we may also usefully refer to the letter dated July 25, 2005, written by the bank to the advocate commissioner wherein they have called upon the

advocate commissioner, why the fourth respondent was not given an opportunity as he was the second highest bidder. It is not known what interest the bank has with fourth respondent. It could also be seen that when the advocate commissioner wants to sell for a higher price, the bank wants to sell for a lower price.

9. In view of the conclusion arrived supra, that the advocate commissioner having confirmed the sale in favour of the appellant, he cannot cancel the same that too without any valid ground or reason and, therefore, the acceptance of the offer by the appellant for the purchase of the property has got to be upheld and accepted.

10. In the result, the appeal is allowed. The appellant is hereby directed to deposit the entire amount of Rs. 35,50,000 (rupees thirty-five lakhs and fifty thousand only) by way of demand draft in favour of the Registrar, DRT, Hydrabad, on or before December 15, 2005.

On such deposit being made, DRT, Hyderabad, shall direct the Recovery Officer to execute necessary sale deed in favour of the appellant and do all other acts in accordance with law.

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