

Thanka Vs. Assistant Registrar of Co-Operative Societies

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SooperKanoon Citation : sooperkanoon.com/65902

Court : Kerala

Decided On : Sep-01-2015

Judge : Honourable Mr. Justice Dama Seshadri Naidu

Appellant : Thanka

Respondent : Assistant Registrar of Co-Operative Societies

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU TUESDAY, THE 1ST DAY OF SEPTEMBER 2015 10TH BHADRA, 1937 WP(C).No. 19652 of 2015 (F)

----- PETITIONER: ----- THANKA, W/O.RAGHAVAN, KUNNUMPARAMBIL HOSUE, MATTAMPURAM, KURICHI KARA, THRISSUR. BY ADVS.SRI.C.A.ANOOP SMT.C.K.REMANY RESPONDENTS:

----- 1. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, (ARBITRATION, LIQUIDATION, EXECUTION), THRISSUR-680 001.

2. SPECIAL SALE OFFICER, VILVATTOM CO-OPERATIVE BANK, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) AYYANTHOLE, THRISSUR-680 003. ADDL.R3 IMPEADED:

3. THE SECRETARY, VILVATTOM CO-OPERATIVE BANK, VILVATTOM, AYYANTHOLE, THRISSUR - 680 003. (ADDL.R3 IMPEADED AS PER

ORDER

DATED0207.2015 IN I.A. NO. 9245 OF2015 RADDL R3 BY ADV. SRI.C.E.UNNIKRISHNAN R BY SRI. K.C VINCENT, GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0109-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 19652 of 2015 (F) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1. TRUE COPY OF THE

JUDGMENT

DATED221/2014 IN WPC NO.2203/2014. EXT.P2. TRUE COPY OF THE SALE NOTICE DATED295/2014 ISSUED BY THE2D RESPONDENT. EXT.P3. TRUE TRANSLATION OF EXT.P2 SALE NOTICE. RESPONDENTS' EXHIBITS: ----- EXT.R3(a): TRUE COPY OF THE

ORDER

OF THE1T RESPONDENT VIDE NO. 270/2014 DATED2603.2014. EXT.R3(b): TRUE ENGLISH TRANSLATION OF EXT.R3(a). EXT.R3(c): TRUE COPY OF THE RECEIPT DATED3006.2015. EXT.R3(d): TRUE COPY OF THE RECEIPT DATED1407.2015. /True Copy/ P.A to Judge. rv "CR" DAMA SESHADRI NAIDU, J.

----- W.P.(C). No. 19652 of 2015 (F) -----
Dated this the 1st day of September 2015

JUDGMENT

Heard the learned counsel for the petitioner, the learned Government Pleader and the learned Standing Counsel for the third additional respondent, apart from perusing the record.

2. The petitioner, a borrower from the additional third respondent Bank, committed default in the repayment of the loan amount. As a result, the third additional respondent brought the petitioner's mortgaged property to sale. As the sale took place on 30.06.2015 pursuant to Ext.P2 sale notice, and the property was sold in favour of the highest bidder, the petitioner has filed the present writ petition assailing the sale on the ground that there had been no demarcation of boundaries

in the sale notice, and that the notice was defective in showing the measurements of the property by metes and bounds.

3. In fact, the petitioner filed the writ petition without impleading even the creditor Bank, which was later brought on W.P.(C). No.19652/2015 -2- record as the additional third respondent.

4. The learned counsel for the petitioner has submitted that the petitioner is willing to pay the entire loan amount along with interest, and that the additional third respondent Bank cannot have any objection so long as it is recovering its loan dues along with interest.

5. The learned counsel for the additional third respondent Bank has, however, submitted that the sale was concluded in favour of the highest bidder and the said purchaser paid the entire consideration on 14.07.2015. He has further submitted that within the statutorily stipulated time of thirty days, the petitioner, despite being aware of the sale, has not made any application before the Sale Officer or the respondent Bank to have the sale set aside on any alleged irregularity.

6. Indeed, the issue in the writ petition lies in a narrow compass. The Courts have, time and again, held that there ought to be certainty to proceedings of recovery, and that on a mere premise that the defaulting borrower has come back with an offer to pay more amount it is impermissible to set aside the sale that has been validly held. Though the learned counsel for the petitioner, after a fashion, has taken a plea that there are irregularities in the manner of sale, he has, nevertheless, failed to point out any such defects to the W.P.(C). No.19652/2015 - 3- satisfaction of the Court.

7. In *Navalkha & Sons v. Sri Ramanya Das & Others*,¹ (1969) 3 SCC537 the Hon'ble Supreme Court has, on the issue of an offer by the defaulting debtor to pay more amount after the sale in auction has been concluded, held to the following effect:

6. The principles which should govern confirmation of sales are well- established. Where the acceptance of the offer by the Commissioners is subject to confirmation

of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal v. S. Sriman Kanthimathinatha Pillai*, AIR1921 Mad 286, it was observed that where the property is authorised to be sold by 21 Page 22 private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed 'is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathi Pillai*, AIR1925 Mad 318 and *S. Soundajan v. M/s. Roshan & Co.*, AIR1940 Mad 42. In *A. Subbaraya Mudaliar v. K.Sundarajan*, A.I.R. 1951 Mad 1986, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction, is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a 1 (1969) 3 SCC537W.P.(C). No.19652/2015 -4- valid ground for refusing confirmation of the sale or offer already received. (Internal citations omitted) 8. Quoting the above proposition of law with approval, recently the Apex Court in *Vedica Procon Private Limited v. Balleshwar Greens Private Limited & Others*² has held that a mere excuse that the borrower had come back with an offer to pay the entire amount with interest or even with an offer to pay more amount than what had been fetched in the auction could not be a ground to interdict the sale that has

been validly held.

9. In fact, their Lordships, after surveying much case law on the issue, have observed thus:

44. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons (supra) laid down the legal position very clearly that a subsequent higher offer is no valid ground for refusing confirmation 29 Page 30 of a sale or offer already made. Unfortunately, in Divya Manufacturing Company (supra) this Court departed from the principle laid down in Navalkha & Sons (supra). We have already explained 44. A survey of the abovementioned judgments relied upon by the first respondent does not indicate that this Court has ever laid down a principle that whenever a higher offer is received in respect of the sale of the property of a company in liquidation, the Court would be justified in reopening the concluded proceedings. The earliest judgment relied upon by the first respondent in Navalkha & Sons (supra) laid down the legal position very clearly that a 2 Civil Appeal No.6165 of 2015, decided on 13.08.2015 W.P.(C). No.19652/2015 -5- subsequent higher offer is no valid ground for refusing confirmation of a sale or offer already made. Unfortunately, in Divya Manufacturing Company (supra) this Court departed from the principle laid down in Navalkha & Sons (supra). We have already explained what exactly is the departure and how such a departure was not justified. In the facts and circumstances, I do not see any merit in the contention of the petitioner that he be given an opportunity to pay up the entire amount with interest within a short span of time. Even for the said purpose, he should have taken recourse to statutory measure available in that regard. A writ petition under Article 226 of Constitution is no answer. I, therefore, hold that the writ petition is devoid of any merit and, accordingly, dismiss it. No order as to costs. sd/- DAMA SESHADRI NAIDU, JUDGE. rv