

S.L.Sachdev and anr Vs. D.D.A.

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Court : Delhi

Decided On : Aug-18-2011

Judge : Rajiv Sahai Endlaw, J.

Appeal No. : W.P.(C) 5963/2011

Appellant : S.L.Sachdev and anr

Respondent : D.D.A.

Advocate for Def. : Ms. Sangeeta Chandra, Adv.

Advocate for Pet/Ap. : Mr. S. Hari Haran, Adv.

Judgement :

1. The petitioners had participated in an auction held by the respondent DDA in the year 1993 and had as a term of the said auction deposited an amount of `12 lacs as earnest with the respondent DDA. Though the petitioners were the highest bidder but their bid was not accepted/confirmed. The same was subject matter of W.P.(C)5143/1994 earlier preferred by the petitioners but which was ultimately dismissed vide judgment dated 26th October, 2010. It was found in the said judgment that the respondent DDA immediately upon non-acceptance of the bids had repeatedly tendered the refund of the said amount of `12 lacs to the petitioners but the petitioners had refused to accept the same. The Division Bench of this Court thus while dismissing the petition directed the respondent DDA to return the said amount of `12 lacs to the petitioners.

2. This petition has been filed seeking the relief of return of the said amount of `12 lacs with interest.
3. Upon it being put to the counsel for the petitioners as to how this petition is maintainable since direction for refund has already been made in the earlier writ petition, the counsel for the petitioners states that the refund of `12 lacs has already been received and the claim in this petition is confined to interest only. On further enquiry as to why in the title of the petition it is described as for refund of earnest money, the counsel states it is a mistake.
4. It has further been enquired from the counsel for the petitioners whether there was not a term of auction that no interest would be payable on the earnest money. The counsel agrees that there was such a term. The same has also not been disclosed.
5. Similarly, the petitioners though have disclosed that an SLP was preferred to the Supreme Court against the judgment of the Division Bench in the earlier writ petition aforesaid preferred by the petitioners but have not filed a copy of the order of the Apex Court also before this Court.
6. Though the judgment of the Division Bench filed along with the petition is verified as "True Copy" but admittedly contains the wrong writ petition number. The petition even otherwise is incoherent with blanks and missing words.
7. The counsel for the petitioner refers to *Kashyap Zip Ind. V. Union of India* 1993 Supp. (3) SCC 493 in support of his case for entitlement of the petitioners to interest. However the facts in that case were entirely different. In the present case not only are the petitioners not entitled to interest as per terms on which the said amount of `12 lacs was deposited but the petition is also barred by *res judicata/constructive res judicata*. The grievance if any of the petitioners in this regard ought to have been addressed in the earlier round of writ petition and if the petitioners were aggrieved from non-grant of interest by the Division Bench, the same ought to have been agitated before the Supreme Court. The counsel for the petitioners now states that the said ground was in fact taken in the SLP but contends that the SLP was dismissed in limine.

8. The entire filing of the petition is found to be in abuse of the process of this Court. The petitioners without making a complete disclosure have sought to have the notice of the petition issued.

9. The counsel for the petitioners at this stage seeks to withdraw the petition.

10. Though allowing the petitioners to withdraw the petition, the petitioners are burdened with costs of `20,000/- payable to the Delhi Legal Services Authority within four weeks of today. If proof of payment of said costs is not furnished within four weeks to the Registry, the Registry to re- list the matter for appropriate direction.

11. On request of the counsel for the petitioners, who is a young Advocate and states that he will be careful in future, the costs are reduced to `2,000/-.

CM No.12071/2011 (for exemption).

Allowed, subject to just exceptions.

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