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Court : DRAT Madras

Decided On : Jun-03-2008

Judge : T.V. Masilamani, Chairperson

Appeal No. : MA-24 of 2008

Appellant : V. Sridhar

Respondent : Indian Overseas Bank, Rep. by Its Branch Manager and Another

Advocate for Pet/Ap. : M/s. R. Murari, M/s. Y. Thyagarajan.

Judgement :

1. This Appeal is filed challenging the impugned Order passed by the DRT, Visakhapatnam, in Appeal No.1/2004 in RP No.193/2002 in OA-820/1999 on 23.4.2007.

2. The Appellant filed an Application before the DRT to refund Rs.8,35,650/- together with interest at 17.5% p.a. from 10.1.2003 till the date of payment on the ground that the said amount was deposited by him in the said recovery proceedings before the Recovery Officer towards 25% of the bid amount and that after he was informed about the tenancy rights over the Schedule property as the tenant filed a Civil Suit in OS-2674/2002 on the file of 1st Junior Civil Judge at Vijayawada, he did not deposit the balance amount towards the auction price.

Hence he sought for refund of the said amount with interest. Ld. PO after hearing both sides dismissed the Appeal filed by the Appellant herein. Hence the Appeal.

3. Heard both sides. Mr. R. Murari, Ld. Counsel for the Appellant has submitted the following in his argument advanced on the side of the Appellant :-

The DRT ought to have noted that the Auction notice did not contain the claim of the tenant over the mortgaged property made before the Civil Court by filing a Suit and since the 1st Respondent concealed the pendency of the Civil Suit in respect of the mortgaged property at the time of the auction, the principles of natural justice had been violated. Similarly in the event of the Appellant becoming the successful bidder, the Recovery Officer should be in a position to hand over vacant possession of the property to the Appellant. But on the other hand, vacant possession of the property could not be given on account of the claim of tenancy rights over the same. Further the forfeiture clause was not made part of the terms and conditions of the auction in the Auction notice and the forfeiture of Rs.1 lakh was mentioned for the first time by the Recovery Officer only in the Show cause notice issued on 19.2.2003 after the second auction. Similarly the DRT ought to have been put on notice that there was an injunction granted by the Civil Court in favour of the Petitioner in the said Civil Suit filed before the Civil Court at Vijayawada, restraining the land lord from dispossessing the tenants and therefore the suppression of the pendency of a Civil suit materially affected the conduct of auction sale of the mortgaged property. In the above circumstances, the Appellant who was in fact a bonafide bidder in the auction has to be granted the relief as prayed for.

4. The 1st Respondent filed a Counter denying the contentions of the Appellant.

5. In the above circumstances, the points for consideration are as follows :-

1) Whether the Appellant is entitled to the refund of the amount deposited by him towards 25% bid amount in the auction held by the Recovery Officer in the said recovery proceedings ?

2) Whether the impugned Order has to be set aside as prayed for ?

The Points :

6. It is not in controversy that in the recovery proceedings initiated by the 1st Respondent Bank against the 2nd Respondent and others in the recovery proceedings in RP No.193/2002 in OA-820/1999, the Appellant herein, who participated in the auction proceedings deposited Rs.8,35,650/- towards 25% of the bid amount being the Earnest Money Deposit as per the terms and conditions of the auction held by the Recovery Officer. Similarly it is not disputed that subsequently it was made known that the alleged tenant of the mortgaged property filed a Civil Suit in OS-2674/2002 on the file of the 1st Junior Civil Judge at Vijayawada, and obtained an Order of interim injunction as per Order in IA-1196/2002 in the said proceedings against the mortgagor from dispossessing him from the mortgaged property. Further the pendency of the said Civil Suit was not disclosed in the Sale proclamation published by the Recovery Officer, while he brought the mortgaged property for sale. In the above circumstances, the Appellant was constrained to file the Application for refund of the said amount with interest.

7. Ld. Counsel for the Appellant has argued that the Recovery Officer was duty bound to disclose the pending litigation in respect of the mortgaged property at the time of auction and that since he failed to do so, the Appellant is entitled to refund of the amount as prayed for. He has relied on the decision, Lord Plastics and Glass Works (P) Ltd. (In Liquidation), IN RE (1995) 4 Comp. LJ 527 (Cal.), in support of such contention putforth by him. It is no doubt true it was held therein that the purchaser was well within his rights to claim refund of the money along with accrued interest if the Official Liquidator was not in a position to complete the sale on account of the pending litigation over the property put at the auction prior to the date of sale. The said decision was rendered in connection with the question of winding up of a Company by the Company Court.

8. However it is useful to refer to the decision, Darshan Kumari Vs. Punjab National Bank - [2008 (1) D.R.T.C. 229 (PandH)] as the ratio laid therein in connection with similar question squarely applies to the facts of this case. The Division Bench of the Punjab and Haryana High Court held in that case that since

pendency of two Civil suits in respect of the mortgaged property was not disclosed at the time of Court auction or earlier thereto, the bidder who deposited 25% of the auction price is entitled to the refund of the amount with accrued interest. The dictum of law as laid down in Paragraph-9 of the decision may be extracted as under :-

“After hearing learned counsel for the parties, we are of the considered view that the Recovery Officer of the Tribunal was required to disclose pendency of the civil suits and subsequently appointment of receiver in respect of the property in dispute. There is intrinsic evidence in the written statement filed by the respondent bank indicating that the same property is subject-matter of dispute before the Civil Court. In that regard, the order of the Civil Court appointing receiver, who is to take charge of all assets of the firm, is required to do a number of things including preparation of inventory of articles belonging to the firm, which was being run at 15-A, Industrial Area ‘A’, Ludhiana. This very property was purchased by Mohit Bansal and Kamlesh Aggarwal, vide registered sale deed on 23rd January, 1992. Once the property which was put to auction is the same and also subject-matter of litigation then the petitioner would become entitled to communication of information before auction. It is admitted position that no such information was furnished to the petitioner. The property in any case has been sold further on 31st July, 2006, and it has fetched highest bid of Rs.1,62,000/- (more than Rs.16 lacs) as against the highest price offered by the petitioner amounting to Rs.14,50,000/-. Therefore, the Recovery Officer of the tribunal did not act lawfully and deprived the petitioner from vital information that the property was subject-matter of litigation. Therefore, alternative prayer made by the petitioner that her deposit of 25% deserve to be refunded alongwith accrued interest warrants acceptance.”

9. In this case also, not only the alleged tenant filed the Civil Suit before the 1st Junior Civil Judge, Vijayawada, but also obtained interim injunction restraining the owner of the mortgaged property from dispossessing him and such factual aspect of the matter was neither incorporated in the Sale proclamation nor had the Appellant been put on notice about such pendency of the Civil suit at the time of the auction. Hence this Tribunal is of the considered opinion that the principle of law enunciated in the decision cited supra squarely applies to the facts of this case

and it necessarily follows that non-disclosure of the pendency of Civil suit in respect of the mortgaged property brought for auction by the Recovery Officer is a valid ground for granting the relief directing refund of the amount deposited by the Appellant with accrued interest. On a careful reading of the impugned Order passed by the DRT, I am of the opinion that the Ld. PO failed to appreciate the factual position as well as the question of law involved in this case in a proper perspective and, therefore, the impugned Order is liable to be set aside as prayed for. Thus the above points are found in favour of the Appellant.

10. For the aforesaid reasons, the Appeal is allowed and the impugned Order passed by the DRT, Visakhapatnam, in Appeal No.1/2004 in RP No.193/2002 in OA-820/1999 on 23.4.2007, is set aside. The Application filed by the Appellant before the Recovery Officer of the DRT is allowed directing the Recovery Officer to refund 25% of the sale price i.e. Rs.8,35,650/- deposited by the Appellant together with the accrued interest within two weeks from the date of receipt of copy of this Order. Further the Recovery Officer is directed to proceed with the recovery proceedings in the matter in accordance with law. However, there will be no order as to cost.