

Surindra Chawla

Vs

Commissioner, Sanchaita Investment

Civil Appeal No. 773 of 1987

(M. P. Thakkar, B. C. Ray JJ)

23.03.1987

ORDER

1. Special leave granted. Heard both sides. It cannot be gainsaid that the High Court was perfectly justified in disposing of the matter in the absence of the appellant who was not vigilant to remain present and show cause, in the circumstances of the case. We are, however, persuaded by the argument that ultimately as a matter of fact the appellant has had no opportunity to satisfy the court that the flat in question was not liable to be attached even if the situation was attributable to a fault to a fault on his part. It is no doubt true that the appellant has had to opportunity because he did not avail of the opportunity on September 5, 1986. However, since the matter has far-reaching consequences in respect of a very valuation property and the appellant has no other forum of approach, we are inclined to grant an opportunity to the appellant to show cause to the High Court provided no auction has taken place. Counsel for the appellant solemnly assures that it has not taken place. The counsel for respondent has no instructions or information on this point. If this statement is correct, the appellant shall be given one opportunity to produce oral and documentary evidence in support of his contention. We, therefore, allow the appeal to this limited extent on the assumption that the auction has not taken place and request the High Court to list the matter for early hearing in order to decide the issue on merits after hearing the other side. The appellant undertakes that he will not seek any adjournment in the High Court. If he seeks an adjournment, the High Court would be perfectly justified in refusing it. This Court will not interfere in case the matter has again to be decided ex parte by reason of the absence of the appellant or his failure to produce the evidence on the date fixed by the High Court. However, this order must be made conditional on the appellant paying Rs. 10,000 as costs to the Commissioner, Sanchaita Investment (respondent herein) within 30 days from today and on paying such costs as may have actually been incurred in connection with the auction proceedings. The learned Registrar of the High Court will ascertain the amount so expended and the amount so ascertained will have to be paid by the appellant to the respondent within 30 days of the determination.

2. Subject to the aforesaid conditions, the matter is sent back to the High Court for further proceeding in accordance with law. In case the statement made earlier that the auction has already taken place is incorrect and auction has in fact (sic not) taken place, the appeal will standing dismissed. No costs.

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