

M/S Shalimar Cinema

Vs

Bhasin Film Corporation and Another

Civil Appeal No. 4653 of 1984

(O. Chinnappa Reddy, M. H. Kania, K. Jagannatha Shetty JJ)

19.08.1987

JUDGMENT

CHINNAPPA REDDY, J. -

1. M/S Bhasin film Corporation obtained a decree against the two appellants Shamiudin and Nasimudin for a sum of Rs. 1,44,973. In execution of the decree, 28/48 share in the Shalimar Cinema, Bhogal, New Delhi belonging to the judgment debtors was sold on September 1, 1977 for a sum of Rs. 4,37,000. An application to set aside the sale was dismissed by a learned Single Judge of the High Court and the learned Single Judge's order was confirmed by a Division Bench. The judgment debtors have preferred this appeal by special leave of this Court under Article 136 of the Constitution.

2. Two principal submissions were made on behalf of the appellants. The first was that there was a total failure to comply with the requirements of Order 21 Rule 66 as no notice was give to the judgment debtors of any application made by the decree holders for settling the terms of the proclamation of sale. In fact, it was said that there was no application under Order 21 Rule 66 by the decree holder to the court to settle the terms of the proclamation of sale. The second submission was that the sale was first held on August 29, 1977, but was not concluded. It was adjourned by the auctioneer to a date to be subsequently announced. The sale was purported to have been held on September 1, 1977 without any announcement. This resulted in the bidders being prevented from participating in the auction. A fraud was thus perpetrated by the decree holder and the auction purchaser. On the first question, the learned Single Judge and the Division Bench of the High Court held that there was no notice to the judgment debtors of any application to settle the terms of the proclamation of sale, but that the judgment debtors were not thereby prejudiced. On the second question, it was held that the bid list prepared by the auctioneer on August 29, 1977 showed that the sale was adjourned on the spot to September 1, 1977 and that the statement in the bid list must be presumed to be correct. The High Court was not prepared to accept the evidence of the witnesses for the judgment debtors on that question.

3. In the view that we propose to take on the second question, we don not consider it necessary to express our view on the first question. But we do wish to say that the court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. In the words of the Judicial Committee, "In sales under the direction of the court, it is incumbent on the court to be scrupulous in the extreme". Though it may not be necessary for the court to make a valuation and enter it in the sale proclamation in every case, it is desirable at least in cases of sale of valuable property that the court make its valuation and enter it in the sale proclamation. We think it necessary to add that no action of the court or its officers should be such as to give rise to the criticism that it was done in an

indifferent or causal way. We are constrained to make these observations because it was found by the learned Single Judge in the present case that there actually was no application under Order 21 Rule 66 and that the sale proclamation was prepared in a routine fashion. Having said this much, we now proceed to consider the second question. The bid list prepared by the court auctioneer on August 29, 1977 shows that each of the bidders who participated in the auction on August 29, 1977 put his signature against the bid offered by him. For example, Sardar Charanjit Singh, who at one stage offered a bid of Rs. 1,70,000 and later raised it to Rs. 2,50,000 and again to Rs. 2,90,000 has put his signature at three places against the three bids offered by him. Similarly, Gian Chand Sharma, who originally offered a bid of Rs. One lakh and later raised it to Rs. Two lakhs has put his signatures at two places and Tejwant Singh, who initially offered a bid of Rs. 1,80,000 and later raised it to Rs. 2,80,000 has put his signature at two places against the bids offered by him. At the end of the document, there is to be found a note by the court auctioneer stating. "It is one o'clock, considering that some good bids may come, the auction will be continued on September 1, 1977 from 10.00 a.m. to 1.00 p.m." It is seen that the bidders who participated in the auction on August 29, 1977 put their signatures against the respective bids offered by them, but not at the end of the document. If the signatures had been put at the end of the document, that would have established that the court auctioneer had indeed announced that the auction was adjourned to September 1, 1977. The question whether the sale was adjourned to September 1, 1977 and announcement made on the spot on August 29, 1977 was expressly raised and put in issue. One would have thought that the auction purchaser would have called the court auctioneer as a witness on his behalf to prove the statement contained in the bid list. The auction purchaser refrained from calling him as a witness on his behalf. On the other hand there is one telling circumstance in favour of the case put forward by the judgment debtors. We find from a perusal of the bid lists prepared on August 29, 1977 and September 1, 1977 that as many as eight persons participated in the auction on August 29, 1977 and offered their bids while only four persons participated in the auction on September 1, 1977 and offered their bids, and, what is more important, not one of the eight persons who offered their bids on August 29, 1977 was present to offer his bid on September 1, 1977. It is a very curious and significant circumstance. It could not be that those persons who exhibited the desire to purchase the property on August 29, 1977 en masse decided not to participate in the auction on September 1, 1977. In our opinion, the legitimate inference to be drawn from the circumstance is that the bidders who participated in the auction on August 29, 1977 were not aware that the auction was being continued on September 1, 1977. This could only be if as alleged by the judgment debtors there was no announcement on August 29, 1977 by the court auctioneer that the auction would be continued on September 1, 1977. One of the bidders, who participated in the auction on August 29, 1977, was examined as a witness by the judgment debtors. His bid was in fact the highest bid that was offered on August 29, 1977. He stated in his evidence that after he made his bid for Rs. 2,90,000, he was informed that the time for the auction was over and that the auction would be held again after notice for the same was published in the newspaper. He said, "My last bid was for Rs. 2,90,000 when I was informed that as the time is over, the auction would be re-held after notice for the same as published in the newspaper. I do not remember whether the date for the next auction was announced on that day or not. The auctioneer who was present there had told the bidders that as the time was over, the sale will be; held at a later date after notice for the sale is published". Relying on the sentence that he did not remember whether the date for the next auction was announced on that date or not, it was sought to be made out that the witness was prevaricating and that an announcement must have been made on that very date about the next date of auction. We do not think that there was any attempt by the witness to prevaricate. What the witness meant was made very clear in the very next sentence when he stated that the auctioneer told the bidders that the sale would be held at a later date after the notice for the sale was published. When he was further questioned cross-examination, he stated,

"Thereafter we were talking amongst ourselves about the next date on which the auction was to be held. However, the next date was not announced. I had come to know about the auction to be held on August 29, 1977 from the publication in the newspaper as well as from my personal friends. ... The next date was not informed to me by Mr. Suraj Prakash. It is wrong to suggest that the auctioneer had announced the date after the bidding was over on August 29, 1977. ... In fact no date was announced on that date". The evidence of this witness is strongly supported by the circumstance already noticed by us that none of the bidders who participated in the auction on August 29, 1977, participated in the auction on September 1, 1977. There is no conceivable reason as to why this witness who was the highest bidder on August 29, 1977 should have refrained from participating in the auction on September 1, 1977. The evidence of this witness is practically un rebutted since neither the auctioneer nor any of the bidders who participated in the auction on August 29, 1977 was examined on behalf of the auction purchaser. The auction purchaser examined himself and stated that he was present at the auction on August 29, 1977 and that at that time, the auctioneer announced that the auction would be continued on September 1, 1977. We do not have the slightest doubt that he is not a truthful witness. He was unable to explain why he did not offer any bid if he was present at the auction on August 29, 1977. He was also unable to give the name of a single person who offered a bid on August 29, 1977.

4. Both the learned Single Judge of the High Court and the Division Bench appeared to have been carried away by the note of the auctioneer in the bid list of August 29, 1977 ignoring the material fact of the non-examination of the auctioneer as a witness by the auction purchaser. The judgment debtors put the auction purchaser on notice of their case in their objections to the sale. They adduced evidence in support of their case. It was the duty of the auction purchaser to adduce the best evidence in support of his case by examining the auctioneer. He refrained from doing so. In those circumstances it was not open to the courts below to rely upon the note made by the auctioneer in the bid list when the substance of the note was itself under challenge. In addition, we have already mentioned the other outstanding circumstance of the case that not one of the eight bidders who participated in the auction on August 29, 1977 was present at the auction on September 1, 1977. We are led to the irresistible conclusion that no announcement was made on August 29, 1977 that the auction would be continued on September 1, 1977. We are also satisfied that the price of Rs. 4,37,000 for a 28/48 share of a cinema in New Delhi standing on land of the extent of 5000 sq. yard can hardly be considered an adequate price. No doubt the auction purchaser stated in his evidence that Shalimar cinema is situated in a poor locality, eclipsed by a flyover and was in shambles. He denied the suggestion that Shalimar cinema was situated on the best road and in one of the finest colonies of South Delhi. On the other hand, Swaranjit Singh who was the highest bidder on September 1, 1977 stated that he went prepared to the auction to purchase 28/48 share for Rs. twelve lakhs. We do not have any doubt that even in 1977 when prices were not as high as they are today, the price of Rs. 4.37,000 for 28/48 share of the property in question was totally inadequate. We have, therefore, no option but to set aside the sale held on September 1, 1977. The appeal is accordingly allowed. The order of the learned Single Judge and the Division Bench of the High Court are set aside and the sale held on September 1, 1977 is set aside. No costs.

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