

Seth Kashi Ram Chemical (India)

Vs

State of Haryana and Others

Writ Petn. No.434 of 1990

(M.N. Venkatachaliah, N.M. Kasliwal JJ)

29.10.1990

ORDER

1. In this writ-petition, the petitioner M/ s. Kashi Ram Chemical (India) has questioned the legality of certain proceedings initiated by the Haryana State Financial Corporation against the petitioner in the matter of recovery of certain debts due to it by putting-up certain hypothecated properties for sale by public auction in exercise of 'Its statutory powers. It would appear that the auction was conducted on 29-3-1990 on the very day this writ-petition came up for consideration before the Court. The Court made an interim-order that if any bids were received at the auction, their confirmation should be stayed pending disposal of the writ petition.

2. Subsequently, the dispute between the Corporation and the petitioner appears to have been settled. It would appear that the entire amount due to the Corporation as claimed has been paid. Petitioner has produced a receipt dated 21-9-1990 for the sum of Rs. 1,66,132.30 p. which along with a sum of Rs. 5 lakhs earlier paid is stated to satisfy the claims of the Corporation.

3. In the meanwhile Sri Shyam Sunder Goel who had offered the highest bid at the auction has been impleaded to these proceedings. The auction-purchaser asserts that certain rights have accrued to him pursuant to the auction; that the debtor and creditor cannot thereafter settle the matter between themselves to the prejudice of the highest bidder and that he is entitled to have his bid accepted and the auction-sale effectuated.

We are afraid there are at least three obstacles in the way of recognising the bidder's claim. The first is that the auction was itself held pendente lite during the pendency of the writ-petition which had been filed sometime prior to the date of the auction and is therefore subject to its result. Secondly, this Court had expressly interdicted the confirmation of the sale. Thirdly, and this is important, the Fourth-Respondent-Corporation itself, even otherwise, did not deem it prudent to accept the offer. The report of the sale conducting officer is true while the admitted valuation of the property was over Rs. 12 lakhs, the highest bid of only Rs. 8 lakhs and odd offered by Sri Goel was not adequate and that the bid should not be accepted. The terms of the sale notification suggest that the highest-bidder would not ipso facto acquire any right unless the bid is accepted. The stand of the Corporation is that independently of this writ-petition, the Corporation did not consider it prudent to accept the bid even otherwise.

4. In these circumstances there is hardly anything that could be said in favour of the claim of the highest bidder. It appears to us that it is otherwise also not just and reasonable that the auction-sale

should be effectuated. The auction purchaser would be entitled to the refund of Rs. two lakhs and one thousand stated to have been deposited by him on 29-3-1990 as 25% of his bid. In the usual course, in view of the fact that the Financial Corporation itself was not prepared to accept the bid, the auction purchaser would not be entitled to anything more than refund of this deposit. However having regard to the circumstances of the case and the fact the funds of the highest bidder have been retained for seven months, it is appropriate that the petitioner be directed to pay interest to the bidder @ 12% p.a. from 29-3-1990 up to 29-10-1990 on the sum of Rs.2,01,000/-. The said sum of Rs. 2,01,000/- which is lying in deposit with the Fourth-Respondent-Corporation shall be refunded by the Corporation to Sri Shyam Sunder Goel or whoever has deposited it. This shall be done on or before 7-11-1990.

5. So far as interest payable to the highest bidder is concerned it is stated that a sum of Rs. 13,500/- in this behalf is already deposited by the petitioner with the Fourth-Respondent-Corporation pursuant to certain earlier directions of this Court. The Corporation will refund the sum of Rs. 2 lakhs one thousand representing 25% of the bid amount and also pay to the bidder Rs. 13,500/- deposited by the petitioner for the benefit of the bidder towards interest. The balance of the interest shall be paid by the petitioner to the auction purchaser on or before 7-11-1990. This should settle and be in full satisfaction of the all claims of the bidder.

6. Since the claim of the State Financial Corporation has been satisfied, the writ petition does not survive. It is made clear that the private-sale said to have been entered into by the petitioner in order to raise incomes to satisfy the claims of the Corporation shall not prejudice the claims of any other prior encumbrancers. The petitioner shall be entitled to the release of the property from the mortgage in favour of the Corporation. The release from encumbrance shall be effectuated within 2 months from today. The Writ Petition is disposed of accordingly. No costs.

Order accordingly.

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