Narendrakumar Nakhat

Vs

Nandi Hasbi Textile Mills and Others

Civil Appeals Nos. 1292-93 of 1998

(S. M. Quadri, G. T. Nanavati JJ)

27.02.1998

JUDGMENT

G. T. NANAVATI, J. –

1. Leave granted. Heard learned counsel for both the parties.

2. The appellant is challenging in these appeals the order dated 8-10-1996 passed by the High Court in Company Application No. 542 of 1996 made in Company Petition No. 25 of 1985 and also the order dated 21-2-1997 passed in Company Application No. 826 of 1996. The appellant in Company Application No. 542 of 1996 had prayed for refund of Rs. 5 lakhs (being the earnest money deposit) and Rs. 59 lakhs (being 25% of the bid amount/sale consideration) along with accrued interest on the ground that his bid having been cancelled by the High Court, he was entitled to get back those amounts. The High Court directed the Official Liquidator to refund Rs. 50 lakhs and with respect to the remaining amount rejected that application on 8-10-1996. The Syndicate Bank had filed Company Application No. 743 of 1996 with a prayer to award compensation to it and not to refund the said amounts till then. It was also rejected on the same day. The bank has not challenged that order probably because the whole amount was not ordered to be refundable. The appellant then filed a review petition (Company Application No. 826 of 1996) but it was rejected on 21-2-1997.

3. The High Court rejected the claim for refund of the earnest money on the ground that at that stage it was not proper to grant it as that might affect the right of the Official Liquidator to forfeit that amount in case it is held that he has suffered some loss as a result of the conduct of the appellant. As regards the claim of the Syndicate Bank for damages the High Court merely stated that "in view of the order made in Company Application No. 542 of 1996, this application stands rejected". In the order passed on Company Application No. 542 of 1996 there is no discussion regarding the Bank's claim for damages or regarding the claim of damages by the General Body of Liquidators on account of the dilatory tactics adopted by the appellant in the proceedings for confirmation of sale. The only observation made in that order is "the question whether the amounts due by the applicant by reason of non-performance of his part of the contract in any manner arises and the damages payable by him could be appropriately adjudicated at a later stage."

4. Mr. R. F. Nariman, learned Senior Counsel appearing for the appellant, submitted that the bid of the appellant having been cancelled, he became entitled to refund of the whole amount and the High Court committed a grave error in not passing an order for refunding the same. He drew out attention to the following observations made by the High Court itself in this behalf :

"As long as the transaction is inchoate or incomplete for any reason and the

> acceptance of the bid is cancelled, the parties are relegated to the original position even though the cancellation of the acceptance of the bid may be on account of the conduct of the bidder himself. By virtue of the cancellation of the acceptance of the bid, the offer made by the bidder is not accepted. It is only on acceptance of the offer made by the bidder, other clauses would stand attracted. This is a case where the sale proceedings were cancelled on account of the conduct of the parties in not doing one or the other acts provided under the terms of sale. The act attributed to the applicant is that he had adopted the stance of filibusters by indulging in dilatory tactics in postponing the proceedings for confirmation of sale. If the Court had confirmed the sale, other terms and conditions in the offer of sale would have arisen. In the absence of such an event of confirmation of the sale, the only conclusion we have to draw is that the applicant is entitled to the entire refund of the money."

5. He also submitted that the Division Bench of the High Court while disposing of the said application proceeded on a wrong assumption that the order dated 12-4-1996 passed by the learned Single Judge of that High Court was the final order as can be seen from the following observations made by it :

> "The learned Company Judge made an order on 12-4-1996 and that order has not been challenged in an appeal. Therefore, the applicant cannot now seek for refund of the entire amount, but only to the extent indicated by the learned Company Judge."

6. Having gone through the order dated 12-4-1996 we find that it was an interim order and the application was ordered to be listed again on 15-4-1996. On that day the learned Single Judge had passed an order for keeping that order in abeyance and directing the secured creditors to file their objections. Thereafter for certain reasons the same application was placed before a Division Bench for passing a final order thereon. Therefore, there was no question of the appellant challenging that order by way of an appeal. The High Court was, therefore, obviously wrong in observing that the appellant "cannot now seek for refund of the entire amount but only to the extent indicated by the learned Company Judge." We also find that the final order passed by the High Court is not quite consistent with its own observation quoted above. As observed by us earlier the High Court has not stated why the balance amount minus the earnest money deposit should not be refunded to the appellant. The bank's application for awarding compensation was rejected. Probably it was premature in view of the fact that the appellant's application for refund of the balance amount was already rejected. Even if we proceed on the basis the appellant had indulged in dilatory tactics during the proceedings for confirmation of sale and had thereby wasted almost one year it cannot be said with certainly at this stage that he will be liable to pay compensation for the alleged loss caused to the General Body of Creditors. The bank is a secured creditor and there is nothing to show that it had made the application for and on behalf of the General Body of Creditors. Their entitlement to damages and the extent of loss suffered by them, even if they are held entitled to claim damages on that count, is yet to be decided. In such circumstances, the Court having not confirmed the sale and cancelled the bid of the appellant, ought not to have rejected the claim of the appellant except in respect of the earnest money deposit of Rs. 5 lakhs. The High Court was, therefore, not right in holding the refund of the remaining amount of Rs. 9 lakhs along with the interest accrued thereon at the instance of the Syndicate Bank. If the bank is of the view that it has suffered any loss as a result of wrongful act of the appellant it will be open to it to adopt an appropriate remedy for claiming damages. Keeping that right of the bank open we allow this appeal party. That part of the order of the High Court whereby the appellant's application for refund of Rs. 9 lakhs being the balance amount out of the total deposit of Rs. 59 lakhs was rejected is set aside and we allow Company

Application No. 542 of 1996 to that extent. There shall be no order as to costs.