

SUPREME COURT OF INDIA

Prakash Industries Ltd.

Vs.

Development Credit Bank Ltd.

C.A.No.9728 of 2002

(S.Rajendra Babu and P.Venkatarama Reddi JJ.)

05.08.2002

JUDGMENT

Rajendra Babu, J.

1. The respondents brought a suit on the original side of the Bombay High Court for recovery of certain sum of money against the petitioner and the Guarantor. In respect of machinery which had been stated to have been financed by the respondent-Bank a Court Receiver was appointed and the respondents took out a Notice of Motion making several prayers, including one for sale of the suit machinery. The learned trial Judge refused the prayer for the same. On appeal to the Division Bench, the same had been allowed subject to sanction of the court and with liberty to the petitioner to participate in the sale as and when it is held. Pursuant to the order of sale, the respondents issued advertisement and also received offers for the same. An application was made to the Division Bench seeking permission for sale of the suit machinery to the person having made the best offer which was at Rs. 1.26 crores. However, subsequently, the petitioner offered a sum of Rs. 1.30 crores. The Division Bench had refused to consider the said request. Hence this petition.

2. The Division Bench of the High Court is of the opinion that nothing had been done by the petitioner to take part in the sale as and when it was sought to be held and did not participate in the same. It was made clear in the advertisement that interested parties should apply within 15 days and, therefore, the High Court is of the opinion that there was no bona fides on the part of the petitioner.

3. Now, an attempt is sought to be made by the petitioner to participate in the sale proceedings by contending that it is at the stage of confirmation of sale that the petitioner's request ought to be considered if it is the best offer available in the market and viable. This exercise appears to us to be only the after-thought and the view taken by the Division Bench of the High Court does not call for any interference. The High Court cannot be stated to have mis-understood its own order. In the circumstances of the case, we do not think that any interference is called for in the order made by the High Court. The amounts of money

deposited by the petitioner pursuant to order dated 3.5.2002 be refunded. Subject as aforesaid, the petition stands dismissed. No costs.