

**SUPREME COURT OF INDIA**

M.V. Janardhan Reddy

Vs.

Vijaya Bank

C.A.No.3201 of 2008

(C.K. Thakker and D.K. Jain JJ.)

02.05.2008

**JUDGMENT**

**C.K. Thakker, J.**

1. Leave granted.

2. The present appeal is filed by the appellant herein against the judgment and order of Andhra Pradesh in Original Side Appeal No. 44 of 2006. By the said order, the Division Bench of the High Court dismissed the appeal and confirmed the order, dated September 8, 2006 passed by the Single Judge of that Court in Company Application No. 73 of 2006.

3. To appreciate the controversy raised in the present appeal, few relevant facts may be stated;

4. Vijaya Bank-Respondent No.1 herein ('Bank' for short) filed Original Suit No. 57 of 1989 in the Court of Subordinate Judge, Bhongir against Messrs Kran Organics Chemicals (P) Ltd (in liquidation) ('Company' for short) for recovery of Rs.94,50,524/- as also another Suit being Original Suit No. 61 of 1989 in the same Court for recovery of Rs.6,43,962/-. Both the suits were decreed by a common judgment dated July 24, 1993. The Bank filed execution applications which were transferred to Debts Recovery Tribunal on establishment of the Tribunal under Recovery of Debts due to Banks and Financial Institutions Act, 1993. Recovery certificates were issued in favour of the Bank and the Bank was allowed to execute the decree.

5. Since the matter was pending in the Company Court and Official Liquidator was appointed, the Bank made an application, being Company Application No. 219 of 1996 in Company Petition No. 18 of 1990 in accordance with the provisions of Section 446 of the *Companies Act, 1956* (hereinafter referred to as 'the Act') read with Rule 117 of the *Companies (Court) Rules, 1959* (hereinafter referred to as 'the Rules') for granting leave to proceed with the sale of the property of the Company.

6. The Company Court, vide its order, dated August 13, 1999 granted the permission.

7. The Bank then took steps for sale of land and building of the Company. It got valuation report from approved valuer, assessed market value and realizable value, submitted copies of judgment, recovery certificate and valuation report, etc. to the Official Liquidator. It made an application being Company Application No. 187 of 2005 to the Company Court under Sections 446 and 457 of the Act read with Rule 9 of the Rules praying for acceptance of the Valuation Report and permit the Bank to sell the property by conducting auction through Recovery Officer, Debt Recovery Tribunal, Hyderabad.

8. On February 2, 2005, the Bank published a notice fixing date of sale as March 13, 2005. A public notice was issued in 'Vaartha' on February 9, 2005. Reserve price was fixed at Rs.45 lakhs. No bidder, however, came forward and auction could not be effected. Same thing was repeated in auction sales scheduled to be held on May 29, 2005, July 8, 2005 and September 14, 2005. In an auction held on December 19, 2005, the appellant had offered Rs. 67.50 lakhs which was the highest bid and it was accepted. The Bank made an application in January, 2006, being Company Application NO. 73 of 2006 requesting the Company Court to allow the Recovery Officer of the Tribunal to confirm the sale in favour of the appellant and to permit him to issue sale certificate. On February 13, 2006, Recovery Officer confirmed the sale. It was stated in the said order that the purchasers had purchased the property for a sum of Rs.67,50,000/- at a public auction held on December 19, 2005. Full amount of the sale consideration was paid on January 3, 2006.

9. It was then stated;

"Accordingly, the said sale is hereby confirmed".

10. According to the appellant, on February 23, 2006, the Official Liquidator submitted a report to the Hon'ble Court wherein he also stated that there was no impediment in confirming the sale. Sale certificate was issued in favour of the appellant on March 2, 2006. The sale was registered on March 16, 2006. On March 17, 2006, however, the Company Judge set aside the sale without issuing notice and without affording an opportunity of hearing to the appellant observing that the sale was not properly conducted and was confirmed without an order from the Court. The sale was, therefore, set aside.

11. It appears that an application was made by the appellant to recall the said order. Meanwhile, the Company Judge issued direction to the Official Liquidator to sell the property. Notice was issued by the Official Liquidator for sale of property. The appellant, however, approached the Division Bench of the High Court by filing Original Side Appeal No. 28 of 2006 complaining that an order passed by the Company Judge setting aside the sale, was illegal, unlawful, violative of principles of natural justice and fair play inasmuch as no notice was issued and no opportunity of hearing was afforded before passing the said order, which adversely affected the appellant. The Division Bench upheld the contention of the appellant, allowed the appeal filed by him and set aside the order passed by the Company

Judge. The matter was again ordered to be placed before the learned Company Judge for passing an appropriate order in accordance with law.

12. The learned Company Judge, thereafter, heard the parties and by an order dated September 8, 2006, set aside the sale which was in favour of the appellant and ordered that the amount deposited by the appellant be refunded to him. The appellant approached the Division Bench of the High Court but the Division Bench also dismissed the appeal. The said order is challenged in the present appeal.

13. On February 12, 2007, notice was issued by this Court. The matter thereafter appeared on the board from time to time. Status quo was also granted. Parties were permitted to file replies and a direction was issued to the Registry to place the matter for final hearing on a non-miscellaneous day and that is how the matter has been placed before us.

14. We have heard learned counsel for the parties.

15. The learned counsel for the appellant contended that the auction was held in accordance with law by the authorities and upset price was fixed as Rs.45 lakhs. The appellant was the highest bidder on December 19, 2005 and his bid was for Rs.67.50 lakhs. The said bid was accepted and the entire amount was paid by him and the sale was confirmed. The sale, therefore, could not have been interfered with and set aside by the Court. It was also submitted that after confirmation of sale, no order setting aside the sale could have been passed by the Court. The learned counsel submitted that once the sale was confirmed, it could be set aside only on certain grounds such as fraud or irregularity in conducting sale, etc. Since no such ground was there, the order setting aside sale was illegal and was of no effect. It was also submitted that remarks of the Official Liquidator were called and Official Liquidator vide his report dated February 23, 2006 stated that as against the upset price of Rs.45 lakhs, the highest bid was of Rs.67.50 lakhs by the appellant and there was no impediment in confirming the sale. Hence, even on that ground, the Company Judge was not justified in setting aside the sale. The counsel stated that at an earlier occasion also, an order was passed by the Company Judge setting aside the sale without issuing notice and giving opportunity of hearing to the appellant. Fortunately, however, the said order was set aside by the Division Bench. But again the Company Judge set aside the sale and the Division Bench confirmed the said order. The counsel submitted that after confirmation of sale, sale certificate was issued in favour of the appellant on March 2, 2006, sale deed was registered on March 16, 2006 and the appellant had paid an amount of Rs.4 lakhs towards stamp duty. All these had caused serious prejudice to the appellant. The entire amount of Rs.67.50 lakhs was paid in the beginning of 2006 and if at this stage, the order of the High Court is not interfered with, irreparable injury and loss would be caused to the appellant. He, therefore, submitted that the order passed by the High Court deserves to be set aside by restoring confirmation of sale in favour of the appellant and by directing the respondents to take consequential action.

16. The learned counsel for respondent Nos. 1 and 2, on the other hand, supported the order passed by the learned Company Judge and confirmed by the Division Bench. It was

submitted that the Recovery Officer had no power, authority or jurisdiction to confirm sale and an order of confirming sale passed by him on February 13, 2006 was, therefore, without power or authority. Moreover, Company proceedings were pending before the learned Company Judge. The Company was ordered to be wound up. Official Liquidator was appointed who was in charge of the assets of the Company. He was not taken in confidence, nor was he associated with the auction of assets and properties of the Company in liquidation and an action had been taken by the Recovery Officer which was contrary to law. Even the report submitted by the Official Liquidator expressly stated;

"Since Official Liquidator was not associated with the proceedings of sale, he has no comments to offer".

17. So far as the order passed by the learned Company Judge is concerned, it specifically and unequivocally stated that permission of the court should be obtained before sale is confirmed or finalized. That order was passed as early as on August 13, 1999. In an order, dated March 25, 2005 also, it was expressly mentioned that the sale was subject to confirmation of the Court. It was an express condition imposed by the Company Court and as such it was not open to the Recovery Officer to confirm the sale and such order, which was having no authority of law, was rightly set aside by the Company Judge and no grievance could be made. Finally, it was submitted that the Court was wholly justified in observing that the property would have fetched much more than Rs. 67.50 lakhs. In fact, in a subsequent auction, the highest bid was of Rs.1, 80, 00,000 i.e. almost three times than the highest bid of the appellant. In the circumstances, it could not be said that any illegality had been committed by the Court in setting aside the sale or there was miscarriage of justice. It was, therefore, submitted that the appeal deserves to be dismissed.

18. On behalf of respondent No. 3, an affidavit in reply is filed and it is stated that after the bid of respondent No. 3 was accepted for Rs. 1.80 crores, it had paid the said amount in November, 2006. The sale was confirmed by the Company Court in its favour, sale deed was executed and even physical and actual possession of the property was given to respondent No. 3. The third respondent also obtained necessary permission and certificates from the Authorities so as to enable it to start unit. It had incurred substantial expenditure of about Rs. 1.50 crores and also taken steps for recruitment of staff. If at this stage, the order passed by the High Court is set aside, great prejudice would be caused to the said respondent.

19. Having heard the learned counsel for the parties and having given anxious consideration to the facts and circumstances in their entirety, in our opinion, it cannot be said that by setting aside sale, either the learned Company Judge or the Division Bench has committed any illegality which deserves interference in exercise of discretionary power under Article 136 of the Constitution.

20. Our attention has been invited by the learned counsel to the relevant orders passed by the Company Court from time to time. So far as the order dated August 13, 1999 is concerned, permission to sell the property was granted on certain terms and conditions. They read as under;

“A) The Official Liquidator shall be allowed to have inspection of the properties and assets of the company in liquidation and to take inventory as and when required.

B) Certified copy of the Judgment and decree passed by the Subordinate Judge, Bhongir in O.S. No.57/89 dt. 24.7.1993 shall be made available to the official Liquidator without delay.

C) The certified copy of the order that would be passed by the Debt Recovery Tribunal, Bangalore shall be made available to the official Liquidator without avoidable delay.

D) The petitioner-Bank shall file the valuer's report in the court before the properties covered under the mortgage deed are put to sale.

E) Permission of this court shall be obtained before the sale of the properties movable or immovable, is confirmed or finalized.

F) The petitioner-Bank shall undertake to deposit and shall deposit the workmen dues with the official Liquidator as and when quantified by him as per the provisions of Section 529(A) of the Indian Companies Act.

G) Whatever surplus remains after the sale and realization of the dues of the secured creditors and the workmen, as per law, the balance sale proceeds shall be made available to the official Liquidator for being dealt with in accordance with the provisions of the companies Act and the Rules.”

(Emphasis supplied)

21. An order, dated March 28, 2005 in Company Application No. 187 of 2005 was equally clear. It read as under;

"This is an application filed by the Nationalized Bank seeking permission of this Court to receive the valuation report and also to permit the bank to effect sale of the properties of the Company under liquidation through the Recovery Officer of the Debts Recovery Tribunal, in terms of the conditions of auction sale notice dated 2.2.2005.

It is also stated that though sale notice was ordered, no sale was conducted as no permission was obtained from this Court. The Official Liquidator also filed a report reporting that there is no objection as to the proposed auction and also the valuation report as filed by the applicant Company.

Under the above circumstances, the applicant company is permitted to go ahead with the proposed sale of the assets of the Company under Liquidation through public

auction. But, however, the said sale, if any effected, shall be subject to the confirmation of this Court. The applicant is accordingly granted permission to effect the sale, but the sale shall be required to be confirmed by this Court.

The application is accordingly disposed of." (Emphasis supplied)

22. The above orders leave no room of doubt that the Bank was permitted to go ahead with the proposed sale of the assets of the Company under liquidation by way of auction but such sale was subject to confirmation by the Company Court. It is, therefore, clear that all parties were aware about the condition as to confirmation of sale by the Company Court. It was, therefore, not open to Recovery Officer to confirm sale. The order passed and action taken by the Recovery Officer was in clear violation of and inconsistent with the specific condition imposed by the Company Court. In our considered opinion, therefore, the appellant cannot take any advantage of confirmation of sale by the Recovery Officer who did not possess the power to confirm sale.

23. So far as confirmation of sale is concerned, the principles are well-settled. It is, therefore, not necessary to consider various decisions on that point. We may, however, refer to *M/s Navalakha & Sons v. Sri Ramanya Das & Ors.*<sup>1</sup>.

24. In that case, speaking for the Court, Ramaswami, J. stated;

"The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal v. S. Sriman Kanthimathinatha Pillai*, it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathi Pillai* and *S. Soundarajan v. Roshan & Co.* In *A. Subbaraya Mudaliar v. K. Sundarajan*, it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no

suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received".

[See the decision of the Madras High Court in Roshan & Co's case (supra)].

25. It is true that the Recovery Officer confirmed the sale in favour of the appellant. But as we have already noted, in view of condition imposed by the Company Court, Recovery Officer did not have the power to confirm sale. An order passed by an officer having no authority of law has no effect. It neither creates any right in favour of a party for whom such order is made nor imposes any obligation on the opposite party against whom it was passed.

26. In *Sikander Khan v. Radha Kishan*<sup>2</sup> auction sale of agricultural land was confirmed by the Collector. The judgment-debtor filed an application under Order 21, Rule 90 of the *Code of Civil Procedure, 1908* contending that the Collector had no jurisdiction to confirm the sale and his action, therefore, was null and void.

27. Upholding the contention and setting aside the sale, this Court said;

"Learned counsel appearing for the appellants urged that the view taken by the High Court that the Collector had jurisdiction to confirm the auction-sale was patently erroneous. In other words, what the learned counsel contends is that under Section 71 of the Code read with Order 21 Rule 92 CPC, the Collector is only authorised to hold and conduct the auction-sale but he has no power to confirm the sale. According to him, the confirmation of auction-sale can only be done by the civil court after deciding the objections, if filed. We find substance in the argument. Order 21 Rule 92 of the Code of Civil Procedure provides that the civil court shall have power to make an order confirming the sale and thereupon the sale shall become absolute. What Section 71 of the Code provides is that where the execution of the decree is passed by the competent civil court, which cannot be satisfied and requires sale of the agricultural holding of a pakka tenant, the auction-sale of such land shall be conducted by the Collector on fulfilment of certain conditions. It is, therefore, crystal clear that only the auction-sale of an agricultural land is to be held and conducted by the orders of the Collector and not the confirmation of such sale. In view of the fact that in the present case the auction-sale of the appellants' land was not confirmed by the civil court, the auction-sale was a nullity and the executing court was right when it set aside the impugned auction-sale".

28. It is true that when the Company Judge set aside the sale on March 17, 2006, the order was reversed by the Division Bench of the High Court since it was in breach of natural justice. That does not, however, mean that the Company Court could not pass fresh order after affording opportunity of hearing to the parties. In our opinion, the Company Court was right in passing fresh order after hearing the parties. If the Recovery Officer could not have confirmed the sale, obviously all actions taken in pursuance of confirmation of sale, such as,

issuance of sale certificate, registration of documents, etc., would be of no consequence. Since the Company was in liquidation and Official Liquidator was in charge of the assets of the Company, he ought to have been associated with the auction proceedings, which was not done. This is also clear from the report submitted by the Official Liquidator and on that ground also, the auction sale was liable to be set aside.

29. Thus, taking into account overall circumstances, it cannot be said that by setting aside the sale, any illegality had been committed by the Court or the appellant had suffered. The grievance voiced by the appellant, therefore, is not well founded and cannot be upheld.

30. One thing, however, may be noted. In the auction held on December 19, 2005, the appellant was the highest bidder. His bid of Rs.67.50 lakhs was accepted and he paid the earnest money. Sale was confirmed albeit illegally, by the Recovery Officer on February 13, 2006 and he paid the remaining amount. The appellant thus paid the entire amount of Rs.67.50 lakhs. The sale was confirmed, sale certificate was issued and sale deed was registered in his favour. It is the case of the appellant that he had paid stamp duty of Rs.4 lakhs. Taking into consideration all these factors, in our opinion, ends of justice would be met if respondent No.3M/s MSN Organics (P) Ltd., who has purchased the property for Rs.1.80 crores is directed to pay an amount of Rs.20,00,000/- (twenty lakhs only) to the appellant herein. In our judgment, payment of this amount to the appellant (auction-purchaser) would work as 'some solatium for his trouble and disappointment for the loss of that which is, perhaps, a good bargain' [*Chundi Charan v. Bankey Behary*<sup>3</sup>].

31. For the foregoing reasons, the appeal deserves to be partly allowed and is accordingly allowed to the extent indicated above.

<sup>1</sup>(1970) 2 SCR 77 : (1969) 3 SCC 537

<sup>2</sup>(2002) 9 SCC 405 : JT 2001 (10) SC 29

<sup>3</sup>(1899) 26 Cal 449 (FB)