

Ashok C. Samani

v.

Custodian & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C.K. PRASAD

Ashok C. Samani v. Custodian & Others

Civil Appeal No. 4383-4384 Of 2010 | 17-05-2010

1. These appeals filed by the appellant under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 are directed against order dated 30.04.2010 passed by the Special Judge whereby he dismissed Miscellaneous Applications (L) Nos.15 and 26 of 2010 filed by the appellant who had given highest bid for the flats which were put to sale by the Custodian in furtherance of order dated 25.07.2008 passed by the Judge, Special Court.

2. We have heard Shri U.U. Lalit, learned senior counsel appearing on behalf of the appellant.

3. A perusal of the record shows that by an order dated 25.07.2008, the learned Judge, Special Court disposed of Misc. Petition No.41/1999 filed by the Custodian and directed him to dispose of eight flats belonging to the notified parties in the building known as "Madhuli" situated at Dr. Annie Beasant Road, Worli, Mumbai by following the procedure laid down by the Special Court for sale of the properties of the notified parties. Smt. Jyoti Harshad Mehta and others challenged the order of the learned Judge, Special Court in Civil Appeal No.25207/2008. By an order dated 17.11.2008, this Court directed issue of notice and, at the same time, directed that the process of auction may go on but the same shall not be confirmed without leave of the Court.

4. In the auction conducted by the Custodian, the appellant gave highest bid. His bid was accepted by the learned Judge, Special Court on 13.2.2009 subject to confirmation and leave being obtained from this Court. The Custodian was directed to immediately do the needful. Thereafter, the Custodian filed an application for confirmation of the sale. The same was disposed of by this Court on 23.7.2009 by making it clear that the Court had never intended that the matter relating to confirmation of the auction sale held by the Special Court would be gone into by it and made clear that the learned Judge, Special Court should decide the issue of confirmation of bid given by the appellant.

5. The appeal filed by Smt. Jyoti Harshad Mehta and others was finally allowed by this Court vide judgment titled Jyoti Harshad Mehta and others v. Custodian and others (2009) 10 SCC 564 and the case was remanded to the Judge, Special Court for fresh consideration. The operative part of that judgment reads thus:

"For the reasons aforementioned, the impugned judgment is set aside and the matter is remanded to the learned Judge, Special Court, for consideration thereof afresh in the light of the observations of this Court as expeditiously as possible and preferably within a period of six months from the date of this judgment."

6. After the judgment of this Court, the learned Judge, Special Court passed two interim orders dated 21.08.2009 and 11.09.2009. Finally, he passed order dated 06.11.2009 in Misc. Application Nos.150 to 156 of 2009 and held that as the order of sale of the properties has been set aside by the Supreme Court, there is no justification to retain the earnest money deposit made by the highest bidder. Accordingly, the Custodian was directed to refund the earnest money.

7. On coming to know of order dated 6.11.2009, the appellant filed Misc. Applications (L) Nos.15 and 26 of 2010 and prayed for recall of that order. By the impugned order, the learned Judge, Special Court dismissed both the applications by observing that once this Court quashed the order pursuant to which the flats were sold, the auction sale cannot be confirmed and the earnest money deposited by the highest bidder is liable to be refunded.

8. In our view, the impugned order does not suffer from any legal infirmity. The learned Special Judge has rightly held that in view of the judgment of this Court in *Jyoti Harshad Mehta and others v. Custodian and others* (supra), highest bid given by the appellant cannot be accepted.

9. With the above observation, the appeals are dismissed.