(1986) 03 DEL CK 0012

In the Delhi High Court

Case No : First Appeal No. 74 of 1985

Banwari Lal and Another — APPELLANT

Vs

Kishori Lal and Another — RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Citation : (1986) 30 DLT 43

Hon'ble Judges : D.K. Kapur, C.J;N.N. Goswamy, J

Bench : Division Bench

Judgement

D.K. Kapur, C.J.

(1) This appeal has been heard after a notice to show cause was issued to the respondent .The appeal is directed against the order dated 20th December, 1985 whereby the factory belonging to a partnership was being disposed of in suit No. 845 of 1977. It appears that the Court had decided that the offer of Harbhajan Singh and another should be accepted. In fact, the parties to the suit are agreed that we should direct the property to be transferred to one of the partners. So, we proceed to admit the appeal and decide the same in accordance with the wishes of the parties.

(2) The Court had appointed Mr. C.L. Arora to be a Commissioner for taking the accounts to the partnership which was under dissolution. One of the partnership assets was the land and partnership factory situated at Sahibabad border. The Local Commissioner was considering the sale of the machinery and land etc. There were some attempts to get a division of the factory and factory land amongst the four partners but it was found that this was not reasonably possible. There was a report by the Local Commissioner that an offer has been received for selling the property for Rs. 25 lakhs but the counsel at that time bad represented that the property was worth about Rs. 40 lakhs. Advertisements were given in the Hindustan Times, the Times of India and the Indian Express which led to an offer from M/s Crom Ciicle Piston Rings of Rs. 26.50.000.00 but even then it was thought that higher price should be obtained. Later on, the local

commissioner was directed to readvertise the same and also there was a direction that ten per cent should be paid as earnest money. So, there was a fresh advertisement and Harbhajan Singh made an offer of Rs. 20 lakhs arid also made a deposit of ten per cent amounting to Rs. 2 lakhs. There was a further offer by Mittal Ispat Pvt. Ltd., which was for Rs. 21 lakhs and 10 percent was deposited as earnest money. The Court rejected the offer of M/s. Mittal Ispat on the short ground that it was some days late. In the Court, Mr. G.S. Vohra on behalf of the present appellants made an offer of Rs. 21 lakhs himself on behalf of his client but this does not seem to have been accepted by the Court.

(3) The question is, is this a proper method of selling the property. We feel that even if that even if the matter had not been amicably settled, the sale in favor of somebody by way of tender leads to comparatively low offer. There are two reasons for this. Firstly, there is a great delay in the matters which are decided by Courts as is seen from this case where there were advertisements and there were objections and so on which leads to comparatively low offers being made. If there is an additional condition that ten per cent of the offer has to be paid by way of earnest money the chance of getting a reasonable offer is reduced, the result of this procedure is well indicated from the judgment of the Supreme Court in Sital Singh Vs. State of Punjab, . In that case there was an auction for Mines and Minerals in Faridabad District in Haryana. The auction resulted in an offer of Rs. 4.50 lakhs. There were many objections on various accounts which led to the filing of a writ petition which was dismissed in liming by the single Judge and Lpa was also dismissed. When the matter came before the Supreme Court, the Supreme Court was faced with an offer of one of the parties and directed a kind of auction between the two parties .The earlier price was Rs. 4,50,000.00 but in the auction in Court the amount was Rs. 25 lakhs. This is only one example of results which are achieved by following in accurate procedure at the time of sale. Normally, we would have directed reauction of ibis property which would have realised higher price but the parties are agreed that offer of Rs. 21,10.000.00 made by the appellants, who are two of the partners, should be accepted in place of the offer of Harbhajan Singh etc. for Rs 25 lakhs. Though, this is not much increase in the price, this is on account of the fact that the partners are brothers and thus the property will remain in (he family. As it is agreed between the parties, we would like to dispose of the appeal in this way.

(4) We would, Therefore, merely direct that in place of the order of the learned single Judge the order would be that the property will come to the appellants before us provided they pay Rs. 21,10,000.00 in the following manner. They should deposit Rs. 1,05,500.00 i.e. 5% of the offer on or before 25th March, 1986 and they should pay the balance 45% amounting to Rs. 9,49,500.00 on or before 15th April, 1986. The deposit to be made in the Registry and kept in short term deposit by the Registrar of this Court till it is paid off. It is further made clear that the amount if deposited will not be withdrawn by the respondents who are entitled to the same in equal shares being partners to the extent of 50% till the necessary documents have been drawn up or the final decree is passed,

whichever is necessary. The learned single Judge may decide what formalities have to be completed in order to finally effect the transfer in favor of the appellants.

(5) Now, there is a possibility that the appellants may not be able to deposit this amount by the two dates mentioned. Jf they default then the offer made by Harbhajan Singh and another which was accepted by the order under challenge will stand accepted and they will have to pay the balance amount within the time to be fixed by the Court. In the event of the deposit being made as detailed above by the appellant, the earnest money deposited by Harbhajan Singh and another will be refunded to them. As that amount would have been in deposit for three or four months, we direct that an additional sum of Rs. 5,000.00 by way of interest will be paid to them by the appellants. The parties will appear before the learned Single Judge on 21st April, 1986.