
(1989) 08 OHC CK 0041
In the Orissa High Court
Case No : First Appeal No. 310 of 1981

Executive Engineer, Sundargarh R. and B. Division and Others	APPELLANT
Vs	
Mohan Prasad Sahu	RESPONDENT

Date of Decision : 17-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 299
Contract Act, 1872 — Section 3, 7

Citation : AIR 1990 Ori 26

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : Advocate General, for the Appellant; A.K. Sahoo, for the Respondent

Judgement

G.B. Patnaik, J.—Defendants are the appellants against the judgment and decree of the Subordinate Judge, Sundergarh. The plaintiff filed the suit for a declaration that the auction sale of 33.144 M.T. of rod held on 28-2-1979 is valid and binding on the defendants and for such other relief as the court may deem fit and proper in law and equity.

2. It is alleged in the plaint that an auction sale notice had been issued by defendant 1 and was published in the daily "Samaj" for auction of 37.144 metric tons of cut pieces rod and the auction was scheduled to be held on 28-2-1979. The intending bidders were required to deposit Rs. 342/- and accordingly the plaintiff deposited the said amount and participated in the auction. The plaintiff gave the highest bid of Rs. 42,200/- and the auction was knocked down in favour of the plaintiff and he was directed to deposit the earnest money. Accordingly, the plaintiff deposited Rs. 10,050/-. Thereafter the plaintiff approached the authority to accept the balance auction amount and deliver the materials to him, but on some ground or the other, the defendants did not accept the balance money nor did they deliver the goods in question.

Ultimately, on 16-4-1979, the plaintiff received a letter from defendant 1 intimating that the auction held on 28-2-1979 had been cancelled. The plaintiff

then made a representation to defendant 1 with a copy to defendant 2 praying therein for reconsideration of the order, but the said representation having been turned down, the plaintiff served a notice u/s 80, C.P.C., and ultimately filed the suit.

3. The defendant's in their written statement took the stand that the auction bid was subject to condition laid down in the auction sale notice and a highest bidder would not be entitled to have title over the property unless the bid is accepted by the competent authority and the acceptance is communicated to the bidder. It was also averred in the written statement that it was clearly stipulated in the tender notice that the competent authority was entitled to reject the highest bid without assigning any reason therefor. On these averments it was prayed that the suit was liable to be dismissed.

4. On the aforesaid pleadings, the learned Subordinate Judge framed four issues and on issue 3 came to hold that the order of cancellation of bid was illegal, invalid and improper and not justifiable in law. On issue 2 he held that the plaintiff acquired valid title to the suit property notwithstanding Ext. 3 and on these findings he decreed the suit and directed the defendants to deliver possession of the goods in question within fifteen days to the plaintiff on plaintiff depositing the balance sum of Rs. 30,150/-. It is this judgment and decree which are being assailed in the present appeal.

5. The learned Advocate General appearing for the defendants-appellants contends that the plaintiff even if was the highest bidder had not acquired any title to the property in question and, therefore, the impugned judgment cannot be sustained in law. He further contends that the finding of the Subordinate Judge that the order of cancellation was not in accordance with law is wholly unsustainable and, therefore, must be set aside.

Mr. Sahoo, the learned counsel appearing for the plaintiff-respondent, on the other hand, contends that the plaintiff having been held to be the highest bidder and having deposited the earnest money as required under the rules, the Subordinate Judge was wholly justified in holding that he had acquired a title to the property. The learned counsel further contends that the defendants not having produced the relevant files and not having justified the grounds for cancellation, the cancellation is arbitrary and whimsical and, therefore, the Subordinate Judge was right in his conclusion.

6. In order to appreciate the correctness of the rival submissions, it would be necessary to examine the evidence as well as the law on the point. Before examining the two contentions, it would be appropriate to note certain admitted facts as appear from the pleadings and the evidence. Defendant 1 had issued the notification in the daily "Samaj" which was the auction sale notice (Ext. 1) requiring the intending bidders to inspect the materials and deposit a sum of Rs. 342/- as auction money to participate in the auction. It was clearly stated in the said notice that the accepting authority of the bid reserved the right to accept or

reject the highest or any bid without assigning any reason therefor. Pursuant to the said notice, the plaintiff had deposited a sum of Rs. 342/- and the auction was held on 28-2-1979. It is also admitted that the plaintiff was the highest bidder, the highest bid being Rs. 40,200/-. Subsequent to the bid, the plaintiff did deposit 25 per cent of the bid amount as required under the auction sale notice itself. On these admitted facts, the next question which arises for consideration is whether the plaintiff acquires a valid title in respect of the goods for which he was the highest bidder and whether the competent authority had the right to cancel the bid notwithstanding the fact that the plaintiff was the highest bidder. It is, therefore, to be seen as to what is the status of a tenderer who becomes the highest bidder in the auction.

A tender notice does not amount to an offer or proposal but merely an invitation to the contractors for making an offer. An advertisement for tenders is not a proposal which would bind the authority to sell to the person who makes the highest tender. It is merely an attempt to ascertain whether an offer can be obtained within such a margin as the seller is willing to adopt. The advertisement calling for tenders, therefore, is not a proposal within the meaning of the Contract Act, but it invites a proposal. The acceptance of a tender may be qualified by several conditions. The submission of tender being in the nature of a proposal or offer unless the highest bid of a tenderer is accepted by the competent authority and the said acceptance is communicated to the tenderer, the contract cannot be said to be concluded between the parties. An advertisement for the sale of goods by auction is a mere declaration and does not amount to a contract with any one who may act upon it. The auctioneer's request for bid is not an offer which can be accepted by the highest bidder. It is the bid that constitutes an offer. Therefore, unless that bid is accepted and acceptance is communicated to the bidder, there is no binding contract between the parties and, therefore, no title to the goods accrues in favour of the highest bidder pursuant to the fact that his bid was the highest one and he had deposited the earnest money in accordance with the conditions laid down in the sale notice.

7. A similar question came up for consideration before this Court in the case of Nilgiri Contractors' Society v. State of Orissa AIR 1975 Ori 33, where the Court was considering the bids at auction in a forest auction sale. It was held that no approval having been given by the competent authority and no formal agreement having been executed, no rights had been accrued in favour of the petitioner on the basis of the highest bid given by it which can be said to be merely provisionally accepted by the Divisional Forest Officer. The highest bid at the auction had not been culminated into a binding contract between the parties and, therefore, the bidder had no enforceable right. This being the position of law and admittedly the plaintiff's highest bid not having been accepted by the competent authority and the order of acceptance not having been communicated to him, it must be held that there is no binding contract between the parties and, therefore, the plaintiff does not acquire any title over the goods by being the

highest bidder. Disagreeing with the trial court on issue No. 2, therefore, I hold that the plaintiff has not acquired any title over the goods in question and as such is not entitled to the relief which he seeks merely because he was the highest bidder. The first contention of the learned Advocate General is accordingly sustained.

8. Coming to the question as to the legality or the power of the competent authority to cancel the bid, it is necessary to examine the relevant documents first. The auction sale notice itself clearly stipulates that the accepting authority of the bid reserves the right to accept or reject the highest or any bid without assigning any reason whatsoever, as would appear from Ext. 1. Ext. A is the letter from the plaintiff to defendant 1 wherein plaintiff has sought to be a tenderer. To the said letter he has appended the conditions of sale and agrees to be bound by the terms and conditions of sale. Clause 5 of the conditions of sale clearly stipulates that the competent authority shall not be bound to accept the highest bid or any bid. Ext. C contains the rules for auction of surplus and unserviceable stores which are to be followed by any authority before any material is put to public auction. Clause 11 clearly stipulates that the competent authority vested with the powers to accept a bid under Rule 18 reserves the right not to accept the highest or all bid, and the bid can be rejected without assigning any reason to the bidder concerned, but the accepting authority must record his reasons in writing for not accepting the same. In view of the aforesaid provisions, there is no manner of doubt that the accepting authority reserves the right to cancel a bid without assigning any reason therefor. The learned Subordinate Judge, however, has come to a finding that the cancellation is illegal as the reasons for cancellation had not been furnished to the court. I am unable to accept the aforesaid conclusion of the learned Subordinate Judge. It is true that in view of my conclusion that in the absence of a binding contract between the parties, the plaintiff has no title over the goods, it is not necessary to make a deep probe into the legality of cancellation, but since a finding has been given by the Subordinate Judge and a contention has been raised, I think it appropriate to examine the said issue also. There is absolutely not an iota of materials on which it can be said that the cancellation in question is whimsical or arbitrary. Only by drawing an adverse inference on account of non-furnishing the reasons for cancellation, the Subordinate Judge has come to the aforesaid conclusion. In my considered opinion, that is not the correct position of law. Since the authorities made it clear even in the auction sale notice that it would be open for the competent authority not to accept the highest bid and the same may be cancelled without assigning any reason and the bidder with those conditions gave his tender, he cannot later on assail the said conditions as being one without authority of law. The plaintiff has failed to place any material on record from which it can be held that the order of cancellation is either arbitrary or whimsical. In that view of the matter disagreeing with the learned Subordinate Judge, I hold on issue No. 3 that there is no material on record from which it is possible for a court to come to a conclusion that the cancellation of the bid of the plaintiff by

defendant 2 was not justifiable in law and the issue must be answered against the plaintiff.

9. In the result, therefore, the judgment and decree of the Subordinate Judge are set aside and the plaintiff's suit is dismissed with costs.