

(2014) 12 DEL CK 0191
In the Delhi High Court
Case No : W.P. (Civil) No. 7749/2014

Goldkist Mobile Academy Pvt. Ltd.

APPELLANT

Vs

Jammu and Kashmir Bank

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 65
Constitution of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 54, 60, 69, 69(3), 69A

Citation : (2015) 3 AD 53 : (2015) 1 BC 376 : (2015) 216 DLT 425 : (2014) 146 DRJ 619

Hon'ble Judges : V. Kameswar Rao, J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Ramji Srinivasan, Sr. Advocate, Anil K. Khaware, Azma and Sara Sundaram, Advocate for the Appellant; Arjun Singh Bhati, Sanjeev Bhandari, Ashish Sharma and Pankaj Vivek, Advocate for the Respondent

Judgement

Sanjiv Khanna, J.—M/s. Goldkist Mobile Academy Pvt. Ltd., the petitioner-auction bidder by way of this writ petition under Article 226- 227 of the Constitution of India, has impugned the order dated 10th October, 2014, passed by the Debt Recovery Appellate Tribunal (DRAT, for short).

2. Brief facts of the case are that M/s. Priyanka Overseas Pvt. Ltd. respondent No. 3 (borrower, for short) had availed a loan facility from Jammu & Kashmir Bank-respondent No. 1 (bank, for short). To secure the loan, a land measuring 42 bighas 4 biswas, in Jhatikra/Zatikra, Najafgarh, Delhi was mortgaged with the bank as a security. Due to default made by the borrower, proceedings under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI, for short) were initiated and the secured asset i.e properties in question were put to sale. The petitioner/auction bidder had given highest bid of Rs.16,30,20,000/- in the auction held on 9th July, 2011 for purchase of the mortgaged property against the reserved price of Rs.12 crores.

The petitioner had also deposited earnest money of Rs.1,40,00,000/-. By letter dated 11th July, 2011, the petitioner was duly informed by the bank that they had been declared the highest bidder and should comply with the terms and conditions of the notice inviting the bids. The petitioner deposited the balance 25% of the bid amount within 2 days and remaining 75% within 15 days i.e. on 25th July, 2011.

3. During the course of hearing, it was specifically put to and the petitioner was asked to clarify, whether any confirmation of the bid was received by them. It was accepted that except for letter dated 11th July, 2011, no other communication or letter was received by them from the bank. It was urged that this letter dated 11th July, 2011 and the stand taken by the bank as recorded in the order dated 29th January, 2013, dismissing SA No. 31/2010, preferred by the guarantor Ms Poonam Mansai-respondent No. 2 (guarantor, for short) and respondent No. 3-the borrower, should be treated as confirmation of the highest bid.

4. It is not possible to accept the said contention for the reasons set out below.

5. Letter dated 11th July, 2011, sent by the bank to the petitioner reads as under:-

To,

Goldkist Mobile Academy Pvt.Ltd.

101 Kundan House, 16 Nehru Place

New Delhi 110019

Dated: 11.07.2011

Sub: Sale Notice

Dear Sir,

We are pleased to inform you that you have been declared as the highest bidder in the proceedings held today at a total bid amount of Rs.16,30,20,000/- (Rs.Sixteen Crore, Thirty Lakh and Twenty Thousand only). Kindly comply with the other terms and conditions of the notice inviting bids.

Yours Faithfully

Authorised Officer

J&K Bank Ltd."

The above stated letter merely informed and communicated a fact that the petitioner had given the highest bid and that they should make payment in terms and as per conditions of the notice inviting the bids. This was not a letter of confirmation and acceptance of the bid, concluding and creating a binding contract.

6. The guarantor and borrower had earlier preferred an I.A praying for interim relief in SA No. 31/2010, questioning the auction proceedings before Debt Recovery Tribunal (DRT, for short). On 8th July, 2011, an interim order was passed permitting the bank to proceed with the auction but confirmation of the bid required approval from the DRT. The petitioner cannot deny and contest being aware and informed about the said stipulation or interim order passed by the DRT. The petitioner, in fact, moved an application and was impleaded as a party to SA No. 31/2010. The petitioner filed another application seeking confirmation of sale in their favour and a third application for transfer/deposit of the bid amount in the no lien account.

7. Thus, the petitioner, had due notice when they deposited the payments towards the bid price that the bank would confirm the sale only after approval by the DRT. As on 11th July, 2011 or even when the petitioner had made payment towards 75% of the bid amount on 25th July, 2011, approval had not been granted by the DRT. Thus the bid had not been accepted and confirmed, when the payments were made.

8. SA 31/2010 filed by the borrower and the guarantor, was dismissed by order dated 29th January, 2013. The primary ground and contention raised in the said petition was that the property in question was agricultural land governed by Delhi Land Reforms Act, 1958 and consequently protected under Section 31(1) of the aforesaid Act. The reserved price of Rs.12 crores was questioned as low, for the property was earlier valued in 1996 at Rs.10 crores and in the earlier auctions the reserve price as fixed was Rs.14.77 crores and Rs.15.83 crores. The borrower had claimed that the value of the property had gone up. The bank had contested the petition on multiple grounds including earlier rejection of the plea relying on the Delhi Land Reforms Act and affirmation of the said decision till the Supreme Court. This plea was accepted. The DRT observed and justified reduction of the reserve price to Rs.12 crores for the property had been put to sale twice, vide notices dated 4th April, 2008 and 19th September, 2009 at the reserve price Rs.1477 lacs and Rs.1583.50 lacs, but no bids were received. Pertinently, the DRT observed that if the borrower felt that the property was being sold at a low price, she could make an offer or locate a purchaser ready to give a higher price, as this would only reduce the borrower's liability. It was recorded that the bid of the petitioner was more than the reserve price fixed earlier. The DRT rejected the contention of the borrower that the petitioner had not deposited 25% of the bid amount as per The Security Interest (Enforcement) Rules, 2002 (Rules, for short) in view of the terms and conditions published in the notice notifying the auction. The final observations and directions made in the order dated 29th January, 2013, are to be found in paragraph 13, which reads:

"13. I do not find any force in the S.A. It fails and is dismissed. The bank is at liberty to proceed further with regard to confirmation of sale as per law. With this all the IAs pending adjudication also stand disposed off."

9. The above paragraph is a complete answer to the contention of the petitioner that the confirmation of sale had already taken place or the DRT had directed the bank to confirm the petitioner's bid. The said paragraph lucidly and in clear terms records that the bank was at liberty to precede with regard to confirmation of sale as per law. No affirmative or specific direction was made on the application filed by the petitioner that the bid should be confirmed. This establishes and proves that till the said date i.e. 29.1.2013, there was no confirmation of the bid. Thereafter also, the bank did not confirm or accept the bid of the petitioner.

10. Within a few days of the order dated 29th January, 2013, the borrower was able to find a purchaser namely M/s. K.D. Landhome Pvt. Ltd., the respondent No. 4 herein, who offered to purchase the property in question for Rs.28 crores i.e. nearly Rs.11.70 crores more than the bid of the petitioner. The bank, tempted and apparently satisfied, accepted the offer of the fourth respondent. After sale consideration of Rs.28 crores was deposited; sale certificate dated 20th February, 2013 was issued.

11. In the meantime, the petitioner had written letter dated 5th February, 2013, praying for prompt action by the bank. The petitioner claimed to have visited the bank on 1st and 2nd February, 2013. Request for issuance of sale certificate and no objection certificate signed by authorities and immediate possession of the property was made.

12. The grievance raised by petitioner is that the bank did not inform them about the offer from the fourth respondent at the behest of the borrower. Aggrieved, they claim that they came to know about the rejection of their bid only on 25th February, 2013, when the letter dated 19th February, 2013 of the bank was received by them. By this letter the petitioner was informed that their bid had not been accepted or confirmed. By the same letter, the bank refunded Rs.16,30,20,000/- by way of a demand draft. Before we examine the said contentions, other relevant facts may be noticed.

13. The petitioner on receipt of the letter dated 19th February, 2013 had filed an application in SA No. 31/2010, stating, inter alia, that they had not encashed bank draft and that the bank had violated mandate of the DRT's final order dated 29th January, 2013. Prayer of issuance of sale certificate was made. Initially, the DRT directed the parties to maintain status quo vide order 13th March, 2013, but the direction was subsequently vacated and interim relief declined vide order dated 15th April, 2013. In addition, the petitioner had also filed a separate and substantive SA being SA No. 40/2013 before the DRT questioning the sale certificate issued in favour of the fourth respondent. The order vacating interim stay was made subject matter before the Debt Recovery Appellate Tribunal and the High Court but these proceedings arising out of interim order are not relevant and, therefore, are not being adverted to.

14. There could be some merit in the contention of the petitioner that the letter

dated 19th February, 2013 rejecting and not confirming their bid was sent/ dispatched on 22nd February, 2013 i.e. after the sale certificate was issued on 20th February, 2013 in favour of the fourth respondent, but this reason or ground is not sufficient and a good cause to reject or negate the sale certificate and to issue a direction for confirming the bid given by the petitioner. The stand of the bank that they had not confirmed or accepted the bid of the petitioner is correct. Thus no concluded and binding contract existed, compelling the bank to execute the sale certificate or deed in favour of the petitioner. The bank could not have rejected the petitioner's bid without receiving payment from the fourth respondent. It was natural for them to await payment from the fourth respondent, before rejecting the petitioner's bid and inform them.

15. The petitioner next submits that in October, 2012, there was a major change in the policy and the property put to auction could be used for low density country homes and the floor area utilization was increased from 1% to 20%. Commercial usage of land of more than 5 acres was also permitted. However, it is an accepted position that the said policy was only notified in May, 2013, and not earlier. The aforesaid contention may have been relevant and important but in the facts of the present case, for several reasons, we are not inclined to accept the submission of the petitioner as a cogent and firm ground to set aside the sale certificate in favour of the fourth respondent. As recorded above, the policy was notified in the Gazette only in May, 2013. Significantly, the impugned order passed by the DRAT records and it is not denied, that the petitioner had declined offer of inter se bidding with the fourth respondent before the DRT. This offer regarding inter se bidding was also given at the time of arguments before the DRAT and stands recorded. The refusals are not denied before us. Hence, it is not possible to accept the contention of the petitioner that the sale consideration of Rs.28 crores paid by the fourth respondent was less than the market value or did not represent the fair market value of the property. Noticeably, the petitioner had offered only Rs.16,30,20,000/- and is insisting on sale of the property at the said price. The impugned order correctly records and highlights the difference of Rs.11.30 crores in the bid amount of Rs. 16,30,20,000 and the price of Rs. 28,00,0000/- paid by the fourth respondent. The price difference is substantial and huge. The total dues of the borrower were to the tune Rs.60/65 crores and Rs. 28 crores would only partially reduce the amount due. The borrower was and is fully supporting the fourth respondent. In fact, the submission of the petitioner would constitute a good and sufficient cause for the bank not to accept or confirm the petitioner's bid due to changed circumstances as propounded by the petitioner themselves. Rejection of the bid given by the petitioner would, therefore, be in accord with the submission made by the petitioner.

16. The petitioner had drawn our attention to Section 13(1) of the Act and Rules 8 and 9 of the Rules, to support their submission that sale/transfer in their favour was conclusive/binding and the bank was precluded from entering into a new transaction and accepting offer of Rs.28 crores from the fourth respondent. The submission is that in terms of the said Rules, the petitioner's bid of

Rs.16,30,20,000/- could not have been rejected. Reliance was placed on the decision of the Supreme Court in Bishan Paul Vs. Mothu Ram, .

17. Reliance placed on Bishan Paul's case is misconceived and devoid of merit. The said case related to eviction proceeding initiated by the landlord, who had purchased the property in an auction held under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The bid of the landlord/owner was accepted and the entire sale consideration stood paid. Sale certificate was issued and registered later on. Question arose, when or at which stage in the said case the transfer of property or title had taken place and reference was made to Section 65 of the Code of Civil Procedure, 1908. In the present case, the bid given by the petitioner has not been accepted and, therefore, the question of title relating back to the date of auction does not arise. The plea of the petitioner, if accepted, would mean that whenever a bidder gives the highest bid, the title is deemed to pass on the date of auction. The contention obviously has no merit and has to be rejected.

18. The first contention, we record is again not correct and fallacious in view of the authoritative pronouncement of the Supreme Court in Mathew Varghese Vs. M. Amritha Kumar and Others, , wherein reference was made to Section 13 and in particular to sub-section 8 and then to Rules 8 and 9 of the Rules. Section 13(8) of the Act entitles and empowers the borrower to make payment to the secured creditor together with costs, charges and expenses at any time before the date fixed for sale or transfer and thereupon the secured asset is not to be sold and no further steps are to be taken by the secured creditor for transfer or sale of the secured asset. Section 13(1) is no doubt a non-obstante provision but is restricted to Section 69 and 69A of the Transfer of Property Act, 1882. The Supreme Court highlighted and emphasized the objective and salutary purpose behind the 30 days" notice to the borrower. Express reference was made to Section 60 of the Transfer of property Act and the judgment in Narandas Karsondas Vs. S.A. Kamtam and Another, was held applicable to the proceedings under the Act, recording the following reasoning:

"37. Mr. Shyam Divan, learned Senior Counsel relied upon the decision in Narandas Karsondas Vs. S.A. Kamtam and Another, , in which the right of a mortgagor as prescribed under Section 60 of the TP Act has been spelt out. Under Section 60 of the TP Act, at any time after the principal money fell due, there is a right in the mortgagor on payment or tender at a proper time and place of the mortgage money, to require a mortgagee to restore the property to the mortgagor with all rights prescribed as it stood prior to the mortgage. Under the proviso, the only impediment would be that if such a right of a mortgagor stood extinguished by the act of the parties or by the decree of a court. Certain other conditions are also stipulated in the said provision for the mortgagor to seek for redemption of the mortgaged property. Dealing with the said provision, this Court held as under in paras 34 and 35. Paras 34 and 35 are as under: (SCC p. 254)

"34. The right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties. The combined effect of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act is that a contract for sale in respect of immovable property of the value of more than one hundred rupees without registration cannot extinguish the equity of redemption. In India it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without intervention of the court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption. The extinction of the right of redemption has to be subsequent to the deed conferring such power. The right of redemption is not extinguished at the expiry of the period. The equity of redemption is not extinguished by mere contract for sale.

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further Section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption."

(emphasis added)

38. On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in *Narandas Karsondas Vs. S.A. Kamtam and Another*, while construing Section 60 of the TP Act. But as rightly contended by Mr. Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the SARFAESI Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying Section 60 of the TP Act, this Court has envisaged the

situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property."

19. The Supreme Court observed that the principles with reference to Section 60 of the Transfer of Property Act are general in nature and applicable to all mortgages. These principles would have application in respect of secured interest or a secured asset. The aforesaid principles would apply with all force to a transaction as between the creditor or debtor made a subject matter under the Act. On manner and approach which should be adopted by the tribunal/courts in relation to the proceedings under the Act, it was observed:

"41. Here again we find that even if there was some difference in the amount tendered by the borrower while exercising his right of redemption under Section 13(8), the question of difference in the amount should be kept open and can be decided subsequently, but on that score the right of redemption of the mortgagor cannot be frustrated. Elaborating the statement of law made therein, we wish to state that the endeavour or the role of a secured creditor in such a situation while resorting to any sale for the realisation of dues of a mortgaged asset, should be that the mortgagor is entitled for some lenience, if not more to be shown, to enable the borrower to tender the amounts due in order to ensure that the constitutional right to property is preserved, rather than it being deprived of."

The aforesaid paragraphs are a complete answer and in fact negate and overturn the stand of the petitioner predicted on a wrong premise that a concluded and binding contract existed. The borrower was within her right to find a purchaser as the bid of the petitioner had not been confirmed and accepted by the bank.

20. We also record that the terms of auction did postulate that the highest bid need not be confirmed and the sale was subject to confirmation by authorized officer. In Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, , a confirmed sale was set aside but before possession was delivered to the auction purchaser as another party had offered a higher price. The Supreme court in Divya Pharamceuticals Co. Ltd. (supra) followed two earlier decisions in LICA (P.) Ltd. (No. 1) Vs. Official Liquidator and Another, and LICA (P.) Ltd. (No. 2) Vs. Official Liquidator and Another, . These decisions were followed by the

Supreme Court subsequently in FCS Software Solutions Ltd. Vs. LA Medical Devices Ltd. and Others, . Relying on these decisions, in D.J. Enterprises Ltd. & Anr. Vs. IFCI Ltd. & Ors., Writ Petition (Civil) No. 10219/2009 decided on 4th May, 2010 and M/s. Hari Kripa Towers Pvt. Ltd. vs. M/s. IFCI Ltd. W.P (C) No. 4166/2010 decided on 5th July, 2010, it has been held by this High Court that the principles or ratio relating to sales made by the company court would be equally applicable. Thus, the highest bidder cannot have any vested right to claim confirmation of his bid or quotation. Of course, if the bid is wrongly rejected in a capricious and arbitrary manner, the allegation can be examined but this is not the position in the present case. These decisions of the High Court of Delhi have to be read in light and terms of the decision of the Supreme Court in Mathew Varghese (supra), which specifically interprets section 13 of the Act and the applicable Rules. The difference in price between the bid of the petitioner and the price paid by the fourth respondent is too startling and staggering. As already noted, the petitioner refused to participate in inter-se bidding. The entire submission of the petitioner is that their bid should be accepted as the transaction was concluded and had become binding, is without merit and has to be rejected.

21. The last question raised before us relates to interest on refund. The DRT in their order dated 11th August, 2014 had directed as under:

"35. Now the question is whether applicant entitled to get interest over the amount so deposited with the bank. The applicant is entitled for interest as applicable for the period from the date of deposit till the date of bank has returned his money. As the applicant has refused to accept the demand draft sent by the respondent No. 1 bank. The applicant is not entitle for interest for this period as this money is not invested by the bank in FDR and kept in suspension account. However, this Tribunal has ordered for keeping the money in FDR on 01.07.2014 from that date interest generated shall be given to the applicant."

22. It has been urged before us that the plea with regard to interest was raised before the DRAT, but has not been dealt with in the impugned order dated 10th October, 2014. We do not find any discussion on the said aspect in the impugned order. An order of remit is accordingly passed on the question "whether the petitioner is entitled to interest, and if so, at what rate and for which period".

23. To cut short delay parties are directed to appear before the DRAT on 22nd December, 2014, when a date of hearing will be fixed.

24. In view of the aforesaid, we dismiss the writ petition, except to the extent of an order of remand on the question of interest. Normally, we would have imposed costs on the petitioner, but in view of the fact that we have remitted the matter on the question of interest, costs are not being imposed.