

(2010) 04 P&H CK 0013
In the Punjab And Haryana At Chandigarh

Haryana Financial Corporation and Another	APPELLANT
Vs	
Bitto Enterprises Private Ltd.	RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

State Financial Corporations Act, 1951 — Section 32

Citation : (2010) 159 PLR 261

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This common judgment will dispose of the aforementioned Regular Second Appeal and Civil Revision as both of them arise out of the proceedings initiated by the plaintiff-M/s Bittoo Enterprises Pvt. Ltd., New Delhi through civil suit No. 906 of 21.7.1990.

2. The plaintiff had filed the above-said suit for permanent injunction against the Haryana Financial Corporation (for short, "the Corporation") and its Branch Manager stationed at Rewari. It was pleaded that the Corporation published advertisements in the leading newspapers vide which entrepreneurs were invited to purchase industrial units and existing buildings & machinery in a public auction and that the date of auction was fixed as 12.4.1990 at Rewari where land measuring 7 kanals and 18 marlas at Delhi Road, Rewari, which was reserved for a factory to manufacture copper, brass, zinc and other industrial coils along with factory premises & machinery belonging to Ms Surindra Enterprises Pvt. Ltd., Delhi Road, Rewari was also declared to be auctioned. The terms and conditions for sale of property were as under:

1. Auction will be held on 12.4.1990 at 11 AM.
2. 10% will be paid at the fall of hammer, 15% within 30 days and 75% after negotiations. It will be paid within 3 years.
3. The acceptance of auction will be subject to the approval of the Managing Director.

4. The Managing Director reserved the right of rejection of the bid if he thinks that the bid is very low.

3. It was averred that the auction took place as scheduled and the plaintiff gave a bid of Rs. 55,55,000/- which was the highest one; that 10% thereof was accordingly deposited at the fall of hammer, that thereafter the plaintiff tried to take permission for depositing 15% of the bid money vide letters dated 9.5.1990 and 17.5.1990 as per the terms of the auction notice; that on 19.7.1990, a letter was received from the Branch Manager of the Corporation posted at Rewari vide which it was informed that the bid was considered and declined by the Managing Director; that a cheque of Rs. 5.55 lacs was also sent along with mis letter as refund of 10% deposited on 12.4.1990 and that thereafter another notice appeared in the newspapers fixing the fresh auction of the property belonging to M/S Surindra Enterprises on 23.7.1990.

4. On the basis of the aforementioned averments, the plaintiff had prayed that the Corporation and its Branch Manager be permanently restrained from re-auctioning the property belonging to M/s Surindra Enterprises for which it had already gave the highest bid on 12.4.1990.

5. Upon notice, the Corporation and its Branch Manager appeared and filed their written statement, contesting the suit. As many as three preliminary objections were taken including that the civil Court had no jurisdiction to try the suit. It was averred that the bid of the plaintiff was rightly declined on 19.7.1990 as the final accepting authority was the Managing Director, who did not accept the same being lower than the market value. They further averred that the plaintiff did not deposit 15% of the auction money as per notice and its plea that permission to do so was not given, was meaningless as no such permission was required. It was pleaded that the plaintiff had violated the terms and conditions of the auction and that in notice dated 26.3.1990 published in the newspapers vide which auction was fixed for 12.4.1990, it was clearly mentioned that the Managing Director was the final authority to accept or reject the bid without assigning any reason.

6. Replication was filed by the plaintiff controverting the averments of the Corporation and its Branch Manager and it was averred that no opportunity of hearing was afforded before rejecting the bid and that the civil Court had jurisdiction to adjudicate upon the suit in view of the provisions of Section 32(11) and (12) of the State Financial Corporation Act, 1951 (for short, "the Act"). It was further averred that the plaintiff continued to visit the office of the Corporation at Rewari for depositing 15% of the bid money and also written letters dated 9.5.1990 and 17.5.1990. The plea of the Corporation and its Branch Manager that the bid was less than the market value was also pleaded to be without any basis.

7. On the pleadings of the parties, the following issues were framed:

1. Whether the order dated 19.7.980 conveying the cancellation of auction

already conducted in favour of plaintiff is lawful? OPD

2. Relief.

8. After appraisal of the entire evidence on record, Sub Judge Ist Class, Rewari (hereinafter described as "the trial Court") decreed the suit of the plaintiff with costs vide judgment and decree dated 6.8.1990. It was concluded that the Corporation was not justified in declining the bid without assigning any reason and that there was no material from where it could be said that the bid was low and, therefore, its action was arbitrary.

9. Feeling aggrieved, the Corporation and its Branch Manager filed an appeal which was dismissed by the Additional District Judge, Rewari (referred to hereinafter as "the first appellate Court") vide his judgment and decree dated 27.11.1991. It was held that since there was no order rejecting the bid which was produced on record, it could not be said that a decision had been taken to cancel the bid and in any eventuality, it affirmed the reasoning of the trial Court.

10. Hence, this Regular Second Appeal.

11. In the meantime, the plaintiff filed execution petition in which a statement was made by the Branch Manager on 20.3.2006 that possession of the auctioned property shall be delivered. Before that, the Corporation and the Branch Manager moved objections dated 10.2.2006. Thereafter, the Branch Manager filed application dated 27.3.2006 for withdrawal of his statement of admission dated 20.3.2006, whereas the Corporation made application dated 15.4.2006 for withdrawing the said statement and for recalling order dated 20.3.2006. The Executing Court disposed of the objections as well as other applications vide its order dated 20.4.2006 and directed that in case the judgment debtors were not able to get a stay order beyond the period of four weeks which was granted by this Court in Civil Revision No. 1806 of 2006 preferred against order dated 20.3.2006, they would deliver the possession of the auctioned property to the decree holder on 1.5.2006, failing which the decree holder would be entitled for delivery of possession through Court.

12. The Corporation has preferred C.R. No. 2348 of 2006 for setting aside order dated 20.4.2006 passed by the Executing Court. On 28.4.2006, a Coordinate Bench had stayed further proceedings before the Executing Court.

13. In the appeal, CM. No. 2705-C of 2010 has been filed by the appellants under Order 41 Rule 27 of the C.P.C. for placing on record noting sheet, Annexure A/1 by way of additional evidence. The plaintiff has filed a reply to it opposing the same.

14. It may also be mentioned here that M/S Surindra Enterprises Pvt. Ltd. has also filed CM. Nos. S82-C of 2008 and 2616-C of 2010, the first one for becoming a party to the appeal and the second for permission to place on record a copy of letter dated 30.6.2005 (Annexure R2/1) vide which an offer was given for one time settlement.

15. I have heard the learned Counsel for the parties and have perused the whole record.

16. The controversy which arises for consideration of this Court is as to whether the bid made by the plaintiff was a complete contract of sale or not and whether the Corporation had any right to re-auction the property or not and whether the plaintiff was required to be heard before the bid in its favour was rejected or not and whether in a suit for injunction, the possession of the property could be ordered to be given to the respondent, especially when there is no prayer for enforcement of the contract in the suit?

17. Mark-A is the advertisement in which the conditions were set in for auction of 12.4.1990. The same are not in controversy as both the parties are agreed that these conditions existed. A perusal of these conditions clearly revealed that the auction was subject to confirmation by the Managing director of the Corporation. The contract of sale could not be said to have been completed in favour of the plaintiff till the time the entire conditions were met and in any eventuality, the Managing Director had reserved a right to accept or reject the bid without assigning any reason. The Corporation was, therefore, not obliged to either hear the plaintiff before rejecting the bid or to associate its representative with the decision making process. After the process of bidding was complete with the fall of hammer, the contract came into twilight area in which the plaintiff too had a right to wriggle out of the bid in the event of its deciding so and likewise, the Corporation had a right to refuse the acceptance of the bid which refusal was to come from the competent authority, who was identified as the Managing Director. There being no positive concluded contract between the Corporation and the plaintiff, the latter was precluded from enforcing the same in a Court of law. In any case, the present suit is not for enforcement of the process of auction left mid-way according to the plaintiff and which was conclusively rejected as per the Corporation. But, it was only for permanent injunction seeking a restrain on the Corporation from reauctioning the property.

18. The effect of the decree passed in favour of the plaintiff would have and has actually created only a logjam in which recovery of public money has been stalled without resulting in any fruitful benefit to the plaintiff, who holds the same in its favour.

19. In Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, , their Lordships, while dealing with the auction sale of a liquor shop under the Delhi Liquor License Rules, 1976, held as under:

Under Clause 21 of Rule 5.34, the person to whom the shop has been sold is required to deposit one-sixth of total annual fee within seven days. But that sale is deemed to have been made in favour of the highest bidder only on the completion of the formalities before the conclusion of the sale and where one of the conditions of auction provides that final bid would be made subject to the confirmation of the Chief Commissioner, then the contract of sale is not complete

till the bid is so confirmed. Till such confirmation, the person whose bid has been provisionally accepted is entitled to withdraw his bid and when the bid is so withdrawn before the confirmation of the Chief Commissioner the bidder will not be liable for damages on account of any breach of contract or for shortfall on the resale. So where the highest bidder in an auction sale of a liquor shop did not deposit one sixth of the purchase price within seven days of the auction whereupon the resale was ordered without the bid having been confirmed by the Chief Commissioner then the essential prerequisites of a completed sale being missing no liability could be imposed on the auction purchaser for payment of the deficiency in the price on the resale.

20. In *Haridwar Singh Vs. Bagun Sumbrui and Others*, , their Lordships of the Apex Court noticed the facts of the case before them and then held in the following words:

At an auction for settlement of a coup the highest bid of H was accepted by the Divisional Forest Officer subject to confirmation by Government. The D.F.O. Reported about the auction sale to the conservator of forest who forwarded the papers to the State Government for confirmation of the acceptance. During the pendency of the matter before the Government, the highest bidder communicated his willingness to take the settlement at the reserve price which was higher than the bid. Thereafter, he applied for the settlement of the coup on the basis of the highest bid. The Government by a telegram to the conservator of forests confirmed the auction sale with H at the reserve price. As no intimation was received by the D.F.O. He did not communicate it to H. Later on, the Government cancelled the settlement of the coup with H and settled the same with another person for an amount higher than the reserve price.

Held: that there was no concluded contract between the Government and the highest bidder H. There was no confirmation of the acceptance of the bid to take the coup in settlement for the highest amount of bid. What the government did was not to confirm the acceptance made by the Divisional forest Officer, but to accept the offer made by H in his communication that he would take the coup for the reserve price. The telegram sent to the conservator of forests could not be considered as a communication of the acceptance of that offer to H. The acceptance of the offer was not even put in the course of transmission to H and so even assuming that an acceptance need not come to the knowledge of the offered, H could not contend that there was a concluded contract on the basis of his offer contained in his communication to take the settlement at reserve price as the acceptance of that offer was not put in the course of transmission. Quite apart from that, H himself revoked that offer later on by applying for the settlement of the coup at the highest bid made by him in the auction.

21. In view of the above discussion and the law laid down in the aforementioned cases, it is held that without the auction being confirmed, the plaintiff had no right to either invoke the auction in his favour or to stall the further process as has been done in the instant case. The Courts below have, therefore, erred in

decreeing the suit of the plaintiff by holding that the principles of natural justice have been violated as no hearing had been given to the plaintiff and that there was no order on record showing the rejection of the bid.

22. The fact that re-auction was ordered by itself shows that the bid had been rejected. In any eventuality, there is some material which has been sought to be brought on record by way of additional evidence through C.M. No. 2705-C of 2010 which is accepted in the circumstances of the case and the document, Annexure A/1 is permitted to be placed on record, that a decision making process was adopted by the Corporation while rejecting the bid in favour of the plaintiff. The relevant extract of Annexure A/1, which is a copy of the noting sheet dated 14.5.1990, is reproduced below:

Re. M/s Surindra Enterprises Pvt. Ltd. Rewari. Land and building has been assessed by B.M. at Rs. 25.00 lacs. However, machinery is to be assessed by a technical person in the Corporation. Accordingly, Sh. Anil Arora, B.M., Faridabad has been entrusted the work of assessment of plant and machinery and he has been asked to send the assessment report promptly. Action regarding confirmation of the auction shall be taken after receipt of his assessment report. However, B.M. has informed that in case the unit is re-auctioned, highest bid of the order of Rs. 80.00 lacs may be expected. A history note of the case is also placed below for information please. As such, the unit may be put up for re-auction.

23. The aforequoted noting is the part of the Deputy General Manager of the Corporation which was ultimately approved by the Managing Director.

24. It is, thus, clear that some reasoning has gone into the decision to re-auction the property which seems to be in the interest of the Corporation, whether it was served or not, is a separate issue.

25. As a logical corollary to the aforesaid discussion, the plaintiff could not have asked for possession of the auctioned property as a measure of the execution of the decree for permanent injunction. Whatever relief was granted to the plaintiff, it did not confer any right upon the plaintiff to claim possession. It is a settled principle of law that the decree has to be executed as it is and nothing more the same could be granted to the decree holder. The delivery of possession of the property as ordered by the Executing Court is, therefore, erroneous.

26. In *Sarup Singh v. Rattan Singh and Ors.* (1985) 88 P.L.R. 589, a learned Single Judge of this Court held that in execution of a decree for prohibitory injunction, the Executing Court under Order 21 Rule 32 of the C.P.C. cannot issue warrants for restoration of possession to decree holder.

27. Similarly, in *Narinder Singh Vs. Maya Devi and Others*, , another learned Single Judge of this Court observed that the provisions of Rule 32 of Order 21 of the C.P.C. only empowers the court to pass an order of attachment, sending the judgment debtor to civil imprisonment and other ancillary orders relating to

expenses etc., but does not empower the court to issue warrant of possession under this specific provision.

28. For the aforesaid reasons, the questions of law are answered to hold that there was no valid existing enforceable contract between the parties and hence, the suit was misconceived. Further, in a suit for injunction, the possession could not have been ordered to be given to the plaintiff and that since the conclusion of the contract was contingent upon the affirmation of an authority, it was not incumbent upon the Corporation to have given an opportunity of hearing to the plaintiff, especially when no enforceable right existed in its favour.

29. Resultantly, the appeal as well as the revision petition are allowed, the impugned judgments & decrees of the trial Court and the first appellate Court as well as order dated 20.4.2006 passed by the Executing Court are set aside.

30. In so far as the applications of M/S Surindra Enterprises Pvt. Ltd. are concerned, the same do not deserve to be allowed as, in the considered opinion of this Court, it is not a necessary party for the instant proceedings.

31. All other pending civil miscellaneous applications are also disposed of in view of the above.