(1987) 12 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order No. 109 of 1982 and Civil Revision No. 165 of 1982

H.P. Financial Corporation — APPELLANT

Vs

National Disc. Industries
 National Disc. Industries Vs H.P. Financial Corporation — RESPONDENT

Date of Decision : 11-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 84
State Financial Corporations Act, 1951 — Section 31

Citation : (1987) 16 ILR HP 649

Hon'ble Judges : V.P. Bhatnagar, J

Bench : Single Bench

Advocate : A.K. Goel and M.C. Mandhotra, for the Appellant; M.C. Mandhotra, in FAO No. 109 of 1982, P. Gupta and A.K. Goel, in Civil Revision, for the Respondent

Judgement

V.P. Bhatnagar, J.—This order is meant to dispose of F.A.O. No. 109 of 1982 and Civil Revision No. 165 of 1982, as common questions of law and facts are involved therein.

2. At the outset, some of the facts which are not disputed may be noticed. Himachal Pradesh Financial Corporation (hereinafter referred to as the decree-holder--Corporation) got the property belonging to National Disc. Industries, Barotiwala (judgment-debtor) attached under the provisions of Section 31 of the State Financial Corporation Act, 1951. Warrants of sale were issued three times in the year 1978 but could not be executed for one reason or the other. The sale was fixed once again for June 23, 1981. The learned District Judge had permitted the decree-holder--Corporation to bid for the property within the ambit of Order 21, Rule 72 CPC Mr. K.K. Joshi, Senior Manager of the decree-holder--Corporation attended the auction. He has appended the following note on the bid-sheet:

The assessment was for a much higher bid but while bidding, suddendly the bidders started assembling on one corner for a talk. Thus after they made a pool, the H.P.F.C. started bidding but had to stop on objections raised by these bidders on various grounds. As a result of this pooling, the assets have been sold at a low price and as such the auction so held was not satisfactory.

On the same bid-sheet, the judgment-debtor, it appears, was also permitted to put down his version which is to the effect that the bidders had pooled together and that they objected to the representative of the decree-holder--Corporation to participate in the bid and further that as soon as the said representative stopped giving the bid the auction was closed by accepting the highest bid which was Rs. 100/- more than the bid amount given by decree-holder--Corporation. Towards the end of the bid-sheet, the Court Nazir has also appended a note and, according to him, the bid was low due to the reason that the condition with respect to the deposit of 25% of the bid amount at the spot had not been entered in the sale proclamation.

3. The decree-holder--Corporation filed objection petitions dated July 30, 1981 and July 19, 1982 praying that the sale be set aside and that the property be ordered to be re-sold. Mr. Om Sarup Aggarwal who had given the highest bid of Rs. 2,53,100/- (hereinafter referred to as the auction-purchaser) resisted the above-mentioned objection petitions. In pursuance of the orders dated August 5, 1982 passed by this Court in Civil Revision No. 165 of 1982, the learned District Judge dismissed the objection petitions adverted to above but did not pass the final order confirming the sale as he had been asked not to do so by the High Court. F.A.O. No. 109 of 1982 is directed against the aforesaid order dated August 5,1982.

4. This appeal (F.A.O. No. 109 of 1982), in any view, will have to be accepted as there is considerable force in the contention put forward on behalf of the learned Counsel for the Appellant that the decree-holder-Corporation has been wrongfully stopped from participating in the auction inspite of an explicit order made by the learned District Judge to that effect. No doubt, the representative of the decree-holder--Corporation who was allowed, in the first instance, to participate in the auction till the bid amount arose to the sum of Rs. 2,53,000/- did not have 25% of the bid amount to be deposited with the Court Nazir conducting the sale but this was not a good ground for not permitting him to participate in the auction by giving bid specially when the decretal amount was much more than the sale price. The provisions of Order 21, Rule 72 and Rule 84 CPC have to be read conjointly and a harmonious interpretation placed on them. There appears not a single good reason why the decree-holder who has been permitted to bid for the property and thereby is entitled to set-off the purchase money under Rule 72 should also be required to tender a deposit of 25% on the amount of his purchase money. The requirement of the aforesaid deposit is manifestly meant to keep away from the auction all persons except genuine bidders and this requirement cannot apply to the decree-holder-Corporation. It is another thing if

he is called upon to deposit 25 % of that amount by which the purchase money exceeds the decretal amount. The above view finds support from the law laid down in Mathura Das Prabhu Dayal v. Brij Rani and Ors. AIR 1929 Lah 492 Kanhaiyalal v. Sansmal and Anr. AIR 1956 Raj 18 and M. Panchaksharappa v. Shivayogeshwara Cotton Press Co. of Davanagere AIR 1973 Mys 135 . The only case law expressing the contra view is contained in Sivaraya Pundarikaksharao Vs. Lingareddi Venkatareddi, but this has also been mellowed down by the same High Court in Gadde Buchaiah Vs. Dasari Kotaiah and Others, . The view taken therein appears to follow the ''ratio of the case law cited and relied upon on behalf of the Appellant. Be that as it may, one thing which stands out like a sore-thumb from the auction proceedings held on June 23, 1981 is that the property being put to auction was not sold for its correct market value. This is because the representative of the decree-holder--Corporation certainly wanted to give higher bid but was stopped from participating in the auction due to the objection raised by the other bidders who had pooled together apparently for the purpose of purchasing the property for a song Mr. Praneet Gupta Advocate, appearing vice Mr. Devinder Gupta, counsel for the auction-purchaser has relied upon Shri Radhey Shyam Vs. Shyam Behari Singh, and Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, in support of his contention that mere inadequacy of the sale price is not a good ground for setting a side the sale. This is, however, not to a say that if there are other facts and circumstances in addition to gross inadequacy of sale consideration indicating that the auction has not fetched correct sale price, no notice of those facts and circumstances is to be taken. In the present case, it is clear that the auction-purchase would not have been declared the highest bidder had the representative of the decree-holder-Corporation been allowed to continue to participate in the auction as per terms of the court''s order made Under Order 21, Rule 72 CPC when a property is being sold thought Court auction, it is the boundend duty of the Court to ensure, as far as possible, that the property fetches its market price. In any case, the non-participation of the representative of the decree-hold Corporation in auction after a certain stage on objection raised by none else than the Devinder Gupta, counsel for the auction-purchas has relied upon Shri Radhey Shyam Vs. Shyam Behari Singh, and Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, in support of his contention that mere inadequacy of the sale price is not a good ground for setting aside the sale. This is, however, not to say that if there are other facts and circumstances in addition to gross inadequacy of sale consideration indicating that the auction has not fetched correct sale price, no notice of those facts and circumstances is to be taken. In the present case, it is clear that the auction-purchaser would not have been declared the highest bidder had the representative of the decree-holder-Corporation been allowed to continue to participate in the auction as per terms of the court''s order made under Order 21, Rule 72 CPC When a property is being sold through Court auction, it is the bounden duty of the Court to ensure, as far as possible, that the property fetches its market price. In any case, the non-participation of the representative of the decree-holder-Corporation in auction after a certain stage on objections raised by none else than the other bidders including the auction-purchaser does constitute material irregularity resulting in substantial injury to the decree-holder--Corporation as well as the judgment-debtor. The above findings per se, my view, are sufficient for accepting this appeal, setting aside the impugned order and directing that the attached property be re-sold.

5. The sale proceedings further show that the property was put to sale as one lot. The property consisted of immovable property as per schedule-I and machinery and other items as per schedule-2. In the ordinary course of things, this property ought to have been put to auction in two lots so that it could fetch maximum sale price. The failure of the learned District Judge in making a specific order to that effect, in my view, also constitutes an irregularity resulting in substantial injury to the Appellant as well as the judgment-debtor. It is obvious that more prices could have been fetched by conducting the auction in separate lots. Now that this case is being sent back to the learned District Judge, Solan, it is made clear that the Court below should not only order the holding of auction in two lots but may split up the property contained in schedule-2 into further lots, of course after hearing the parties and in particularly the Judgment-debtor and thereafter order the re-sale. On the above point, the Appellant has cited H.S. Siddappa v. Lakshamma and Anr. AIR 1965 Mys 313 whereas the opposite side has relied upon Mani Ram v. Lachman Das and Ors. AIR 1917 Lah 136. Whether the property should be sold in one lot or be split up for the aforesaid purpose would depend on the nature of the property in each case and it will not be possible to lay any hard and fast rules, in the matter. Therefore, the above case law is authority on their own facts and cannot be applied to the other cases and certainly not the one in hand.

6. That the Court has inherent power to set aside a sale in order to do justice is borne out from the law laid down in Punjab Mercantile Bank Ltd. Vs. Sardar Kishan Singh, It may also be observed here that the emphasis placed by the learned District Judge on the proposition about the validity an agreement between bidders to pool in a court auction is rather misplaced. On the facts of this case, such an agreement has positively resulted in gross under valuation of the auction amount and no court would permit such a practice.

7. In view of the above findings, I accept this appeal, set aside the impugned order and the sale and direct the learned District Judge, Solan to proceed with the re-sale of the attached property keeping in view the observations made above. The auction-purchaser in view of the contents of this order would be entitled to the return of the purchase money. The parties are directed to appear before the learned District Judge, Solan on December 23, 1987.

8. Civil Revision No. 165 of 1982 may now be dealt with. The facts culminating in the filing of this Civil Revision are the same as noticed above. After the sale of the attached property on June 23, 1981 by the court auction, the judgment-debtor also filed objections dated August 21,1981 on the grounds which were more or less similar to those taken by the decree-holder--Corporation. The

District Judge, while disposing of the said objections, first adjourned the case for framing issues but there after directed the parties to file affidavits by way of adducing evidence without settling the issues. The judgment-debtor thereupon move an application praying that issues be framed and that evidence be recorded in court which application was rejected by the learned District Judge on June 18, 1982. Aggrieved from the aforesaid order, Civil Revision No. 165 of 1982 has been filed.

9. In view of the acceptance of the appeal of the decree-holder--Corporation, it is evident that the instant Civil Revision becomes infructuous. No orders, therefore, need be passed on this revision petition which stands disposed of. In fact, there is no need even for the learned District Judge to pass any separate orders on the objection petition filed by the judgment-debtor since the property had been ordered to be put to re-sale.

10. C.M.P. No. 168 of 1987 filed in F.A.O. No. 109 of 1982 may also be noticed. According to the averments made therein, the judgment-debtor continues to be in possession of the attached property till today and is stated to be realising considerable amounts of rent from various tenants inducted by him before as well as after the attachment of the said property. The proper forum for moving this type of a petition would be the court below where execution application is pending. This is specially so because both the cases pending in the High Court are now being finally disposed of and further proceedings are to take place in the court of the learned District Judge, Solan. However, the judgment-debtor would not realise rents from the tenants with respect to the property in question till December 23, 1987 on which date the parties have been directed to appear before the learned District Judge at Solan. Further appropriate orders in the matter would be made by that court.

