

(2016) 04 SC CK 0017

In the Supreme Court Of India

Case No : Civil Appeal No. 3593 of 2016 (@ Special Leave Petition (C) No. 3988 of 2016)

Manish Kumar Sureka

APPELLANT

Vs

West Bengal Financial Corporation and Ors.

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 157

Citation : (2016) 162 AIC 181 : (2016) AIR(SCW) 1798 : (2016) 2 AIRJharR 631 : (2016) AIRSC 1798 : (2016) 4 ALLMR 954 : (2016) 116 ALR 446 : (2016) 2 ApexCourtJudgments(SC) 515 : (2016) 2 ARC 538 : (2016) 4 ICC 224 : (2016) 2 JCR 271 : (2016) 4 JT 114 : (2016) 2 KCC

Hon'ble Judges : Kurian Joseph; Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Krishnan Venugopal, Sr. Adv, Gaurav Kejriwal, Sujit Keshri, Advocates, for the Appellant; Ms. Indu Malhotra, Sr. Adv, Ms. Abha R. Sharma, D.S. Paramar, Shyam Divan, Sr. Adv, Sumit Goel, Galav Sharma, Sameer Parekh, (for M/s. Parekh & Co.), A. Gadugia, Lal Pratap Singh, Umesh Pratap Singh, Vikram Singh Arya, Ms. Ruchi Kohli, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

Kurian, J. - Leave granted.

2. The appellant is before this Court, aggrieved by the order dated 02.02.2016, whereby the request made by the appellant for enlargement of time for deposit of the amount ordered by the High Court was rejected.

3. By order dated 23.12.2015, the High Court had passed the following order in respect of the subject matter :-

".....On going through the impugned order, in order to see the Financial Institution gets its substantial repayment of the dues, we are of the opinion the following conditional order would justify the situation :

(i) In case the purchaser of the appellant deposits with the Registrar, Original Side of this Court a sum of RS. 25 Lac as directed by learned Single Judge on or before 28.12.2015, the appeal shall be listed on 05.01.2016, for hearing.

(ii) If the purchaser of the appellant fails to deposit with the Registrar, Original Side of this Court as indicated above the respondent/financial corporation is at liberty to confirm the sale in favour of the private respondent who has come forward to purchase the property of the appellant at RS. 1,88,50,000/- (RS. one crore eighty eight lac fifty thousand only) and has already deposited 10% of the same way back in September 2015.

(iii) If the condition at clause (i) is complied with, when the matter appears before the Court on 05.01.2016 there shall be a bidding between the purchaser of the appellant and the purchaser who has already bid in the public auction and no third party is entitled to participate in the said bid to be held in Court with a bench price of RS. 2 crore. The highest bidder whosoever bids beyond RS. 2 crore shall be entitled to purchase the property.

In case the purchaser of the appellant does not participate in the bid the amount of RS. 25 lac shall be forfeited and further the sale shall be confirmed in favour of the present purchaser in auction at RS. 1,88,50,000/- (RS. one crore eighty eight lac fifty thousand only).

Supplementary affidavit filed in Court today is taken on record."

4. Thereafter, on 14.01.2016, the High Court passed the following order :-

"In terms of earlier order dated 23.12.2015 the best price is fixed is RS. 2 Crore. The party for whom Mr. Menon, learned Advocate is arguing makes it clear that his client is not interested to bid beyond the price already mentioned i.e. RS. 1,88,54,001/- (RS. one crore eighty eight lac fifty four thousand and one). However, the party brought on behalf of the appellant is ready to purchase the property at RS. 2 crore. It is placed on record that already RS. 25 lac is deposited as directed by us. The purchaser on behalf of the appellant seeks to pay the balance sale consideration by way of instalment which request is rejected by us. However, the party concerned is directed to deposit the balance amount of RS. 1.75 crore within two weeks from today with the Registrar, Original Side by way of pay order, failing which the sale already held in favour of the party concerned, for whom Mr. Menon represents will be confirmed. The amount of RS. 25 lac deposited on behalf of the party brought by the appellant will be forfeited in case of failure to deposit the full amount in question, as aforesaid.

The Registrar, Original Side is directed to encash all the pay orders and keep it in interest bearing deposit as far RS. 25 lac is concerned.

x x x x x "

5. The appellant did not deposit the said amount of RS. 1.75 crores within the time granted by the High Court. The request for enlargement of time was

declined. According to the appellant, since there was a bereavement in the family, there was a delay of two days in making the deposit. On the date when the case was called, the appellant had already taken two Demand Drafts, one dated 29.01.2016 for an amount of RS. 85 Lacs and another dated 30.01.2016 for an amount of RS. 90 Lacs. However, the High Court, having regard to the spirit of the order dated 14.01.2016, which we have extracted above, declined to grant time to the appellant and the bid was confirmed in favour of the fifth respondent for an amount of RS. 1,88,54,001/-.

6. Thus aggrieved, the appellant is before this Court.

7. When the matter came up on mentioning before this Court on 05.02.2016, the following order was passed :-

"Taken on board.

Permission to file special leave petition is granted.

Application for impleadment is allowed.

The learned counsel for respondent Nos. 3 and 4 supports the arguments advanced by Shri Krishnan Venugopal, learned senior counsel appearing for the petitioner.

The learned counsel appearing for respondent Nos. 3 and 4 submits that they are benefited by additional amount of around RS. 12,00,000/- and the High Court in any case having given one week's time to the additional respondent-M/s IRC Natural Resources Pvt. Ltd. now impleaded and since the petitioner is ready with the whole amount of RS. 2 crore after adjusting the amount already paid, the interest of respondent Nos. 3 and 4 may also be safeguarded.

Issue notice.

Dasti, in addition, is permitted. All further steps pursuant to the impugned order shall stand stayed.

Post on 22.02.2016."

8. Mr. Shyam Divan, learned senior counsel appearing for the first respondent - Financial Corporation, has submitted that the appellant cannot have any claim since the appellant failed to make the payment within the time permitted by the High Court.

9. Ms. Indu Malhotra, learned senior counsel appearing for the fifth respondent, has submitted that the fifth respondent had already paid the entire balance on 05.02.2016 and, therefore, the appeal may be dismissed.

10. Having regard to the facts, as gathered from the orders extracted above, it is clear that despite rejecting the request for enlargement of time made by the appellant, the High Court had, in fact, granted one week's time to the fifth respondent to make the balance payment. Since the appellant was present

before the Court with the Demand Drafts when the order was passed on 02.02.2016, we find no justification for the stand taken by the High Court in refusing time to the appellant, but granting another week's time to the fifth respondent to make the payment.

11. Be that as it may, as can be seen from the original order dated 23.12.2015, the idea of the High Court was to have a bid between the appellant and the fifth respondent with a base price of RS. 2 crores. Having regard to the said view of the High Court, by our order dated 06.04.2016, we had requested the parties to be present before this Court to have the bid to be conducted before this Court. The fifth respondent has offered only up to RS. 2.20 crores, whereas the appellant has offered RS. 2.22 crores. Therefore, we accept the bid made by the appellant. The two Demand Drafts, referred to above, for an amount of RS. 1.75 crores shall be deposited in the Registry of the High Court within a week from today and after adjusting the original deposit of RS. 25 Lacs, the remaining amount of RS. 22 Lacs shall be deposited in the Registry of the High Court positively on or before 06.05.2016. The intimation of deposit shall be given to the first respondent - Financial Corporation as well.

12. We make it clear that under no circumstances, there shall be an extension of time for depositing the amount. In case the appellant fails to deposit the balance on or before 06.05.2016, the bid will stand confirmed in favour of the fifth respondent for an amount of RS. 2.20 crores and the balance amount shall be deposited in the High Court on or before 14.05.2016.

13. In case the appellant deposits the amount and the bid stands thus confirmed in favour of the appellant, the deposit made by the fifth respondent on 14.09.2015, shall be refunded to the fifth respondent with interest at the rate of 12% within two weeks from the date of the deposit of the balance by the appellant.

14. The subsequent payment made by the fifth respondent on 05.02.2016 will also be refunded to the fifth respondent with interest as aforesaid.

15. We also make it clear that in case the appellant fails to make the deposit with the balance amounts, as directed hereinabove, the initial deposit of RS. 25 Lacs made by the appellant will stand forfeited.

16. It is further made clear that within two weeks from the deposit of the balance amount by either the appellant or by the fifth respondent, the first respondent will take the required further steps for handing over the property after completing the formalities, within two weeks of the deposit.

17. With the above observations and directions, this appeal is disposed of with no order as to costs.