
(2012) 06 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 5352 of 2009

M/s M.K. Agencies

APPELLANT

Vs

The East Central Railway and Others

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8(2)

Citation : (2012) 3 PLJR 740

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Ravi Kumar, Rajiv Ranjan Singh, Kumar Vikram, Mrs. Priya Choubey, for the Appellant; Shabbir Ahmad, for the Respondent

Judgement

J.N. Singh, J.—In this writ application petitioner has made following prayers:--

(i) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of mandamus directing the respondents to allow the petitioner to purchase lot no. 70/2008/SEE/TGN/08/094 for which auction was held on 23.9.2008 on the current prevailing price of the said lot and also to allow the petitioner to deposit the Balance Sale Value (BSV for brevity) within two months from the date of intimation of the current prevailing price of the said lot.

(ii) To issue an appropriate writ(s), orders), direction(s) in the nature of writ of mandamus restraining the respondents from proceeding further with the auction of the aforesaid lot of the petitioner so that the petitioner may not be deprive from purchasing the said lot at the present prevailing price and/or in alternative direct the respondents to refund the earnest money to the tune of Rs. 2,50,000/- deposited by the petitioner.

(iii) To any other relief or reliefs for which the petitioner is found to be entitled in the fact and circumstances of the case.

However, learned counsel for the petitioner submits that since the lots of scrap have now been auctioned by the Railway, he confines his prayer for refund of

earnest money only.

2. Learned counsel for the Railway submits that petitioner's bid was accepted and he deposited the earnest money and thereafter he was given time to submit bid money in which he defaulted. Hence, in terms of clause 3.4 of the Standard Conditions of Auction Sales of the Railways, earnest money has been forfeited. He also submits that notices were served on the petitioner in this regard earlier. He submits that clause 8 of the auction sale notice, as contained in Annexure-1, provides that if any bidder is not in a position to deposit the bid money in time, he will be at liberty to submit an application for extension of time before the competent authority. He submits that the petitioner had done that, vide Annexure-3 to the writ application. However, the same was not accepted and his earnest money was forfeited.

3. Learned counsel for the petitioner submits that the respondents have wrongly stated in the counter affidavit that the petitioner was duly informed, vide Annexure-A, before forfeiting his earnest money. He submits that the postal peon receipt shows that letter was not served and was returned.

4. From the submissions of learned counsel for the parties, and from the records, at least this fact is established that the petitioner did not deposit the bid money within time frame prescribed by the auction sale notice, vide Annexure-1. Hence, in view of the violation of the same, his earnest money was forfeited. In the circumstances, this becomes a dispute with regard to compliance of the terms and conditions of the auction sale notice and the Standard Conditions of Auction Sales.

5. Learned counsel for the petitioner submits that there is no formal agreement with the respondents as per law, nor there is any arbitration clause in the auction sale notice, as contained in Annexure-1, "and in view of Section 8(2) of the Arbitration and Conciliation Act, 1996 matter cannot be referred for arbitration" whereas learned counsel for the Railway submits that the petitioner has a remedy available to him by way of arbitration in terms of clause 9 of the Standard Conditions of Auction Sales (Annexure-C).

6. In the circumstances, this Court is of the view that the petitioner should either avail the remedy of arbitration as referred to by learned counsel for the Railway or should move the appropriate court in accordance with law for getting the dispute decided. This writ application is disposed of with the aforesaid observations and directions.