

(1985) 05 GUJ CK 0004

In the Gujarat High Court

Case No : Letters Patent Appeal No. 175 of 1985

Nitin I. Trivedi

APPELLANT

Vs

The Executive Engineer (Mechanical), Gujarat Maritime Board
and Another

RESPONDENT

Date of Decision : 02-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84

Citation : AIR 1986 Guj 141 : (1985) 2 GLR 860

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; S.B. Majmudar, J

Bench : Division Bench

Advocate : P.K. Jani, for D.D. Vyas, for the Appellant;

Judgement

Gokulakrishnan, C.J.—This Letters Patent Appeal is against the order passed in Special Civil Application No.2337 of 1985. The learned Single Judge of our High Court dismissed the Special Civil Application which was filed under Art. 226 of the Constitution praying for the issue of writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the bid in favour of the respondent 2 in the Special Civil Application, pursuant to the notice at Annexure "A" to the said petition. The appellant herein has also prayed in that Special Civil Application that after setting aside the auction, a fresh auction be held in accordance with law. The facts for the purpose of the disposal of the present Letters Patent Appeal is, that the appellant bid at the auction for the sale of coal ash at the rate of Rs. 371/- per tonne and that the second respondent herein bid at the auction at the rate of Rs. 375/- per tonne., The second respondent deposited a sum of Rs. 50,000/- on the same day, i.e. on 10th January 1985 and the balance of Rs. 75,000/- on 11th Jan. 1985. The deposit is calculated at the rate of 25% of the price of the coal for which the particular individual bid at the auction. The public auction notice states that the person desirous of participating in the public auction shall have to deposit in cash earnest money of Rs. 3,000/- and the highest bidder shall have to deposit in cash the amount equivalent to 25% of the price of the material, immediately.

According to the appellant herein, he gave the bid at the auction at the rate of Rs. 371/- per tonne since he had cash to deposit on the same day only to a limited extent as per the public auction notice. If the appellant had known that he can deposit the 25% Cash as visualized in the public auction notice, Annexure "A", the next day he would have definitely submitted his bid for higher amount than that of the second respondent. According to the appellant, he was prejudiced since the first respondent has permitted the second respondent to deposit the balance of Rs. 75,000/- on the next day of the bid. The learned Single Judge of our High Court after considering the facts of the case found that there is neither violation of Art. 14 of the Constitution nor any ground made out to interfere with the auction held by the first respondent herein under Art. 226 of the Constitution. Hence he summarily rejected the petition. As against this order, the present appeal has been filed.

2. Mr. Jani for Mr. Vyas submitted that, the word "immediately" occurring in the auction notice must be construed in a strict manner and the second respondent ought to have deposited the full amount of 25% on the same day of the auction. The leniency shown by the first respondent, according to the learned counsel for the appellant, contravenes Art. 14 of the Constitution. We have carefully gone through the auction notice and the other pleadings in the case. In the auction notice, which is Annexure "A" to the Special Civil Application, it is simply stated that 25% price of the, material has to be deposited immediately. The analogous provision which, in our opinion, is stringent in its direction is found in O. 21, R. 84, Civil P.C. That reads as follows :

"(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase money under R. 72, the Court may dispense with the requirements of this rule."

Construing the words "shall pay immediately", the Madhya Pradesh High Court in Gangavishan Heeralal Vs. Gopal Digambar Jain and Others, has held the word "immediately" should be construed in the light of the facts and circumstances of each case. So construed, where a sale was held on 28th October, 1978 when respondent No. 2 was the highest bidder but the sale was continued from day to-day until the 22nd Nov. 1978 when respondent No. 2 was declared and approved to be the highest bidder by the court under rule 66 as amended by the High Court of Madhya Pradesh and was notified the next day; it was held that the deposit of 25 per cent of the bid made a day later was valid as having been made within reasonable time after notice to him. In Venkata v. Sama ILR (1891)Mad 227 and Bhim v. Sarwan, ILR (1889) Cal 33, it has been held by the High Courts of Madras and Calcutta that failure to deposit 25% immediately as required by

the rule is no more than a "material irregularity" within the meaning of Rule 90 which would render the sale voidable if substantial injury has resulted by reason of such irregularity. Bearing these decisions in mind, we are of the view that the deposit of the balance of 25% of the price of the material, bid at the auction by the second respondent, the day after the bid can be easily construed that he has deposited the 25% of the price of the material "immediately". If the first respondent had not accepted the highest bid and offered the material to the lower bidder, there may be a point to question it under Art. 14 of the Constitution. The fact that the second respondent has not deposited the whole of 25% of the price of the material is, in our opinion, only a procedural irregularity and it will not in any way affect the bid made by the second respondent herein. We do not find any arbitrariness or discrimination as alleged by the appellant before us.

3. The learned counsel for the appellant relies upon the decision in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, stating that there is discrimination offending Art. 14 of the Constitution. From the facts discussed above, we are of the view that this decision will not be applicable to the facts of the present case.

4. For all these reasons, we are of the view that the dismissal of the Special Civil Application is correct and as such, the Letters Patent Appeal is dismissed.

5. Appeal is dismissed.