

(1961) 04 KAR CK 0002
In the Karnataka High Court
Case No : Misc. Appeal No. 124 of 1961

Premier Insurance Co. Ltd.

APPELLANT

Vs

Bharat Commerce and Industries Ltd. and Others

RESPONDENT

Date of Decision : 10-04-1961

Acts Referred:

Citation : AIR 1962 Kar 185

Hon'ble Judges : K.S. Hedge, J; Ahmed Ali Khan, J

Bench : Division Bench

Advocate : N. Shimcharya, for the Appellant; V. Krishnamurthy and K.R. Gopivalabha Iyengar, for the Respondent

Judgement

Hedge, J.

(1) In this appeal, the order of the learned Company Judge (Sadasivayya, J.) dated 24-3-1961, confirming the sale of the Kapila Textile Mills, Nanjungud (in liquidation) held by the Official Liquidator on 18-2-1961, is challenged.

(2) The confirmation of the sale is a matter which is essentially within the discretion of the Company Judge. It was observed by a Bench of the Allahabad High Court in Brindra Ban Agarwala Vs. Official Liquidator of The Sarswati Soap and Oil Mills Ltd., that where the property was sold by a public auction by the Official Liquidator subject to the confirmation by the Court, the question whether sale should or should not have been confirmed is a matter which lies within the discretion of the Court and the discretion cannot be interfered with unless sufficient grounds have been disclosed which would justify the conclusion that the Court's discretion was not judicially exercised. In the case before us unless the appellant is able to show that the discretion exercised by the Company Judge is not judicially sound, even if on some aspects we are inclined to take a different view of the matter, yet the order of confirmation will not be interfered with. In the above cited decision it was further observed:

When property is sold by an Official Liquidator subject to confirmation by the

Court the subsequent offer of a higher bid should not be a ground for refusing confirmation of the sale provided the price is not inadequate".

If I may say so with respect, I agree with both the principles enunciated above and I shall proceed to examine the contention advanced before us bearing in mind those principles.

(3) This case has a fairly long history. The Mills in question went into Liquidator on 19-1-1959. The Company Court 's efforts to get the parties to agree for a scheme proved fruitless. Hence the Mills in question were ordered to be sold in public auction. The auction was held on 18-6-1960. As that time the highest bid available was Rs.. 15,25,000/-. The sale was confirmed by the Company Court on 15-7-1960. The present appellant (The Premier Insurance Co., Ltd., Madras) took up the matter in appeal to a Bench of this Court of which I was a member. In that appeal the order confirming the sale was set aside mainly on the ground that the price fetched, was wholly inadequate. The fact that the Mills in question had been valued by Experts in 1957, at Rs.. 25,00,000/- was an important factor that influenced the decision of the appellant Bench. No doubt, other incidental matters were also taken into consideration.

After the decision of the appellant Bench on 24-8-1960 the Company Court directed the Official Liquidator to hold a fresh auction sale on 19-11-1960. Meanwhile, an attractive scheme was submitted by Sri Morarka. Some time was spent in considering that scheme. But that scheme did not get through as necessary Bank guarantee was not furnished. On 24-1-1961. The company Court approved the terms and conditions of a fresh sale and ordered that a public auction be held on 18-2-1961. Again some other proposals were placed before the company Court . So that those property may be examined closely the learned Judge directed the Official Liquidator not to advertise the auction sale fixed for 18-2-1961 till 1-2-1961.

But at the same time the Official Liquidator sent circulars to all the persons who had earlier evinced any interest in the matter of purchasing the Mills. He also sent circulars to other Textile Magnates. Running of Textile Mills required both technical knowledge as well as financial resources in the very nature of things only a few persons in this country can be interested in the matter of purchasing Cotton Mills. As mentioned earlier steps to sell the Mills in question were being taken from about the beginning of 1960. The persons interested were aware of this fact.

The official Liquidator had received several inquiries in that connection. State of the interested parties had also inspected the Mills. The Official Liquidator has sent his circular letter about the auction sale to be held on 18-2-1961, to all those persons who had either inspected the Mills or who had made some inquiry about the sale of the Mills. Even some others whom the Official Liquidator thought may by chance be interested in the sale were informed. The sale in question was advertised in two issues of the "Deccan Herald" i.e. on the 6th as

well as on the 12th February 1961. Similarly it was advertised in the "Hindu" on the 10th and 12th of February 1961: in "Hindustan Times" and "Times of India" on the 15th February 1961.

Interested parties were also informed by means of telegrams in addition to the circular either above mentioned. In the public auction held on 18-2-1961, the third respondent in this appeal (Sri. C.J. Agarwala) raised his bid upto Rs.. 22,00,000/-. Subsequent to the auction sale the third respondent came up before the Company Court with an offer to raise his bid to Rs.. 23,00,000/-. In the course of the bearing his learned counsel filed a memo stating that his client is willing to give a minimum but of Rs.. 24,00,000/- if a fresh auction is ordered in this Court the same offer was repeated.

The learned Company Judge had opined that the offer of the third respondent is a bona fide one; by he felt unable to accept it as in his opinion the price fetched could not said to be inadequate. He held that any price more than the reserve bid of Rs.20, 00,000/- fixed by the Court, cannot be considered prima facie as inadequate and therefore in equity he ought to accept the highest bid. I entirely subscribe to that view.

(4) Before the learned Company Judge as well as before us three separate contentions were urged in support of the plea for a fresh sale. They are : (1) the auction sale held on 18-2-1961 is void as it contravened Clauses. 12-B and 12-C of the Cotton Textiles (Control) Order, 1948 which shall be herein after called the "Order" ; (2) the irregularities committed during the conduct of the sale have vitiated the sale; at any rate due to those irregularities, adequate price was not fetched; and (3) the price fetched is wholly inadequate.

(5) I shall now consider each one of these contentions.

Clause 12B and of the " Order" reads :

"No person shall sell or otherwise dispose of a spinning frame, except with the previous permission, in writing, of the Textile Commissioner."

Clause 12C says :

" No person shall sell or otherwise dispose of any power looms or side frame thereof, except with the pervious permission, in writing, of the Textile Commissioner."

The prohibitions contained in Clauses 12B and 12C relate to the sale or disposal of spinning frames, power looms, and side frames. Before the mischief of Clauses 12B and 12C can be attracted, there must be a completed sale. Merely taking steps to sell the spinning frames, power looms or side frames are not hit by those Clauses. The highest bidder in a public auction, subject to the confirmation by other authorities, gets no vested rights till the sale is confirmed. In any case, the bid given by him is only an offer. The same matures into a sale when the bid is accepted and the sale is confirmed.

(6) Admittedly in the instant case the permission in writing from the Textile Commissioner to sell the Mills in question to the First respondent had been obtained before the sale was confirmed by the learned Company Judge. In this view, it is unnecessary to consider the true effect of an ex post facto permission even if there should be a contravention of Clauses 12B and 12C.

(7) Now coming to the irregularities alleged it is firstly said that as the Official Liquidator did not obtain the permission of the Textile Commissioner, before the date of the public auction, permitting him to sell the Mills, the intending bidders were hesitant and therefore proper price was not fetched. It is next urged that as there was no adequate advertisement of the auction sale, the same did not attract sufficient bidders and thus there was no proper competition. I think, there is no force in either of these contentions.

(8) As mentioned earlier, the persons who would have participated in the auction sale must necessarily be those belonging to big business. Apart from the fact that every body is presumed to know law, even otherwise, on the facts of this case, it is reasonable to assume that the bidders would have known about the existence of Clauses 12B and 12 C of the "Order". Barring the affidavit of the third respondent who is undoubtedly an interested party, there is no other material before us to show that any bidder failed to give his highest bid or that any intending buyer did not participate in the auction sale because of the fact that there was no prior permission of the Textile Commissioner. The parties trying to take advantage of any irregularity in question has caused prejudice.

In this case there is no breach of any statutory provision, rule or regulation. Prejudice is a question of fact and the same has to be established as any other fact. In the instant case I am not satisfied that the Official Liquidator's failure to get the permission in advance had in any manner adversely affected the auction sale. Further there is force in Sri. V. Krishnamurthy's contention that the Textile Commissioner would not have given a blanket permission to sell the Mills in question to all and sundry before according permission he would have liked to know the prospective buyer; his decision to grant or refuse to grant the permission asked for would have to some extent at least depend on the capacity , resources and the technical know how at the disposal of the intending purchaser. This contention of Sri Krishnamurthy is supported by the attitude taken by the Textile Commissioner in this very case.

After the auction sale was held on 18-2-1961, as ordered by the Court, the Official Liquidator informed the Textile Commissioner that in the public auction the first respondent was the highest bidder but the sale had not been confirmed. He also informed him that subsequent to the auction sale the third respondent had offered a higher bid and it was for the Company Court either to accept the highest bid given during the public auction or not. He further stated that in those circumstances , he was constrained to ask for permission to sell the Mills to any one the Court deems it. In spite of this request, the Textile Commissioner, merely granted permission to sell the Mills to the first respondent.

This indicates that the Textile Commissioner while considering a request for permission to sell spindles etc is likely to insist on knowing the qualifications of the would be purchaser. It must be borne in mind that the permission in question is essentially a discretionary matter. So long as the Textile Commissioner takes into consideration all the relevant factors and does not take into the consideration any irrelevant factor, his order may not be open to challenge. As at present advised I am unable to hold that the Textile Commissioner is not competent to say that a request for permission will be considered only after knowing the would be buyer. That being so, it cannot be said that the non-obtaining of the permission to sell is an irregularity. As mentioned earlier, even if it is an irregularity, it is not established that the same had adversely affected the auction sale.

(9) Now coming to the adequacy of the advertisements made, while setting out the history of this case I have detailed the steps taken to dispose of the Mills. It is true that the interval between the dates on which the auction sale was advertised and the date on which the auction was held was quite short. But if we take these advertisements along with the other steps taken to notify the auction sale it is not possible to say that the auction sale in question was not adequately advertised. No material is placed before us to show that any intending bidder was precluded from participating in the auction for want of due notice. The only person who complains of lack to due notice is the third respondent. But as mentioned earlier he had participated in the auction. He went on raising his bids stage by stage upto Rs. 21,90,000/-. Therefore his grievance is purely imaginary. Even he does not say that he knows of any person who would have participated in the auction had the same been better advertised.

(10) Lastly we come to the adequacy of the price fetched. In the final analysis this is the only relevant question. In considering this question we must remember that while setting the terms of the sale the Court after taking into consideration all the relevant materials had fixed Rs.20,00,000/- is not inadequate. The price fetched at the auction is Rs. 22,00,000/-. Hence prima facie it cannot be said that the price fetched is inadequate. Barring the fact that in 1957 these Mills were valued at Rs. 25,00,000/- no other relevant material is placed before us to show that the price fetched is inadequate. Ever since the Company went into liquidation the Mills were not working; nor can it be said that ever since then they have been properly attended to.

Hence, the other things being equal the price of the Mills is bound to go down everyday. The greater the delay in disposing of them, the greater is the chance of their deterioration. There is nothing to show that the prices of Cotton Mills have going up in the market. As observed in the *Brindra Ban Agarwala Vs. Official Liquidator of The Sarswati Soap and Oil Mills Ltd.*, the case cited above, that a subsequent higher offer is not the true test of the made quay of the price fetched. Subsequent higher offers may be the outcome other of competition, the trade jealousy and various other circumstances. As observed in *S.*

Soundararajan and Others Vs. Khaka Mahomed Ismail Saheb of Messrs. Roshan and Co., .

"The fact that the sale is subject to the confirmation of the Court does not mean that the Court shall refuse to accept the highest bid because at a later stage some one else is willing to pay more. The condition is only a safeguard against irregularity or fraud in connection with the sale & against property being sold at an inadequate price and an auction purchaser making an adequate bid and complying with all the requirements of the Court and there being no irregularity or fraud is entitled to have the sale confirmed even though at a later stage some other person is willing to pay more."

(As summarised in the head note).

(11) It was strenuously urged on behalf of the unsecured creditors that as things stand they have no chance of getting any dividends; but if the offer of the third respondent is accepted there is the every possibility of their getting some dividends; the primary object of liquidation proceedings is to safeguard the interests of the creditors and hence we should not reject the opportunity that has presented itself to safeguard the interest of the unsecured creditors. There is no doubt that the interest of the creditors is a matter of utmost concern to the Court in all liquidation proceedings. That is why on a previous occasion we set aside the order confirming the auction sale.

But in protecting the interests of the creditors this Court, should not transgress principles which are well accepted. Further as pointed out in the order under appeal the expected benefits are largely illusory. If this Court sets aside the auction sale, equity may require that the first respondent should be adequately compensated. See Subramania Aiyar Vs. Valliamma alias Maragathavalli Ammal and Another, . In addition, interest will have to be paid on the debts to the secured creditors till a fresh sale is held. Then there are current expenses. If provision has to be made for all these outgoings then even if the offer of Rs.24,00,000/- materialises there will be no benefits for the unsecured creditors.

(12) In my judgment, no case is made out to interfere with the order under appeal.

(13) In the result, this appeal fails and the same is dismissed. No costs.

M.A. Ali Khan, J.

(14) I agree.

(15) Appeal dismissed.