(2003) 12 AHC CK 0061

In the Allahabad High Court

Case No : C.M.W.P. No. 2633 of 1982

Radhey Shyam Gupta and Others — APPELLANT

Vs

First Addl. Civil Judge — RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92
Constitution of India, 1950 — Article 226

Citation : AIR 2004 All 183 : (2004) 1 AWC 234 : (2004) 3 BC 328

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : S.P. Gupta, Sunil Gupta and Shesh Kumar Srivastava, for the Appellant; V.B. Upadhya and V.D. Ojha and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Five partners of a partnership firm namely ; M/s. Lallo Mal Hardeo Das Cotton and Spinning Mill, Hathras, instituted a Suit No. 67 of 1944 against other partners for dissolution of the firm arid rendition of accounts. The suit was dismissed for relief of dissolution but certain damages were allowed. This led to filing of three appeals, namely ; First Appeal Nos. 2, 40 and 92 of 1959. In First Appeal No. 40 of 1959 applications were moved and after hearing the parties, this Court passed an order on 22nd March, 1965 dissolving the firm from the date of the suit itself and fixed the share of the partners and totalling to the tune of Rs. 24 lakhs. This Court also appointed four partners as receiver to implement the directions and remitted the records to the Civil Judge, Agra for complying with the directions. On death of one of the receiver, the Civil Judge appointed his son, Ajai Kumar Garg in his place. The immovable property of the firm was situated at Mathura and Hathras. In pursuance of the directions of this Court, the Civil Judge vide order dated 15th February, 1979 after holding that the properties could not be put to auction before ascertaining its market value, allowed the receivers to obtain offers from prospective bidders. However, it clearly mentioned that all offers could only be considered in a public auction to be held under the aegis of a senior lawyer of that Court after the same is duly published in the newspapers. For ascertaining the appropriate value of the properties, the receivers obtained several offers and one such offer of Rs. 5,10,000 made by one Dau Dayal was submitted to the Court. In a maze of several applications moved time and again, this offer relating to the Mathura Property came to be accepted by the Court on 4.11.1981 but no public auction or publication in newspapers took place. The petitioners who are tenants of the property at Mathura, vide their application dated 12th November, 1981 approached the Court reiterating that they had already made an offer of Rs. 4,70,000 with the condition that the same could be matched with any other offer, but the offer of Dau Dayal was accepted behind their back. But the main contention of the petitioner tenant was that the offer has been accepted in the teeth of the direction contained in the orders dated 15.12.1979 and 15.3.1980, that no offer shall be accepted or finalized except by public auction after the publication in the newspapers. This application of the petitioner and their offer of Rs. 5,64,000 appears to have been accepted by the Court vide order dated 11.1.1982 after recalling the earlier order dated 4.11.1981. As already noted hereinabove, this offer was also a private offer and not through a public auction. It appears that one of the receivers made an application that the offers could not be accepted except after complying with the orders of the Court dated 15.2.1979 and 15.3.1980. The Court after examining the issue in detail came to the conclusion that in spite of specific orders neither any publication had been made in a widely circulated newspaper nor any auction had taken place and, therefore, the order approving the offers were against the spirit of the said two orders and finding that such an approach would be against the interest of the estate, it modified the said two orders dated 11.1.1982 and 13.1.1982 and directed that the properties be put to auction after publication in daily newspapers. This order dated 16.2.1982 is under challenge before this Court by the tenant petitioners.

2. At this stage, it may be necessary to point out that when this writ petition was filed the 1st. Additional Civil Judge, was the only respondent arrayed and none of the receivers were arrayed as party. This Court passed an order staying the orders dated 16th February and 24th February, 1982 so far as it related to property situated at Mathura. Though, an impleadment application was made by the petitioner, it remains pending till date. In the meantime, an application was made on behalf of one of the receivers that the writ petition may be dismissed for non-joinder of parties. An application has also been made by the petitioner that the Court may dispense with the impleadment of the receivers and in case it finds it otherwise, the petitioner may be permitted to implead them. Nevertheless, at least one of the receivers is before the Court and has been heard. Therefore, the Court need not enter into this technical aspect, as interest of both the parties can be secured.

3. When this writ petition was taken up on 16th April, 2003, the counsel for the petitioners submitted an offer of Rs. 20 lakhs. The counsel for the petitioners upped his initial offer from 5,64,000 to Rs. 20 lakhs. The counsel for one of the

receivers who was present informed the Court that the price quoted by the petitioner was the one prevailing in 1982, and it was not approximate and he be permitted to submit other offers. This Court, without going into the merits of the case, asked both the parties to submit their offer on 1st of May, 2003. On 1st of May, 2003, the counsel for the receiver made an application that the offer of the petitioner of Rs. 20 lakhs be rejected and he submitted offers of two bidders, namely Prem Singh son of Gajadhar Singh resident of Krishna Nagar, Mathura and Ram Gopal Sharma son of Jagdish Prasad Sharma resident of Kushak Gali, Mathura for Rs. 75 and 80 lakhs respectively. The following order was passed on 1st of May, 2003 :

"In pursuance of the order of this Court dated 16th April, 2003 an application has been moved on behalf of Ajai Kumar Garg, receiver of the property in question with the prayer that the offer of rupees twenty lacs made by the petitioners be rejected and the impugned order be maintained. Along with the application affidavit of two prospective bidders, namely ; Prem Singh son of Sri Gajadhar Singh, resident of Krishan Nagar, Mathura and Ram Gopal Sharma son of Sri Jagdish Prasad Sharma resident of Kushak Gali, Mathura have been annexed wherein offers of Rs. 75 lacs and 80 lacs have been made by the said two persons.

Sri S. P. Gupta, learned senior counsel for the petitioner after consultation with his clients who are present in Court made another tentative offer of Rs. 55 lacs. However, both the parties agreed that these offers are tentative and if they are granted some time, they will make final offers together with furnishing bank drafts of the said final offers and the matter may be adjourned for two weeks.

Without going to the merit of the dispute in the writ petition and the contention of the learned counsel for the parties, list this matter on 20th May, 2003, where both the parties will make the final offers together with bank drafts of the said final offers drawn in the name of the Registrar General of this Court. It will also be open to any other party to make offer but the offer should be final and in the nature of the draft aforesaid.

Put up this matter on 20th May, 2003."

When this matter was taken up on 20th May, 2003, the following order was passed :

"Heard Sri S. P. Gupta, senior advocate assisted by Sri Shesh Kumar Srivastava for the petitioners and Sri V. B. Upadhya, senior advocate assisted by Sri V. D. Ojha for the respondents.

After the matter had been heard at length, during the rejoinder argument of Sri Gupta, it transpired that all the parties which were impleaded in the court below have not been arrayed as parties in this writ petition. The counsel for the petitioner, however, states that an application was filed some times in 2003 to dispense with the impleadment of other party or in the alternative to allow the petitioner to take steps to implead other parties. A separate order on the order sheet has already been passed.

In view of this Court''s order dated 1st of May, 2003 the petitioner has produced 40 demand drafts of different dates totalling Rs. 50 lakhs drawn in favour of the Registrar General of this Court, a hand written detail have been supplied in Court which is made part of the records. However, the drafts are returned to the petitioner for being produced subsequently. The respondents have also filed two drafts No. 021073 and 061361 dated 19.5.2003 totalling Rs. 14 lakhs and has submitted that due to closure of the banks, drafts for total amount of Rs. 80 lakhs could not be produced and the same will be produced on the next date and in case it is not produced the aforesaid two drafts of Rs. 14 lakhs may be forfeited. The two drafts are taken on record and it is hereby directed that the same shall be presented to the Registrar General of this Court who will keep it in a safe cover and will produce it on 25th July, 2003.

List this case on 25th July, 2003."

When the matter was next taken up on 30th July, 2003, the following order was passed :

"In pursuance of the order of this Court dated 20.5.2003, the said impleadment application is not traceable in the office. However, counsel for the petitioner has supplied correct copy of the said impleadment application and the counsel for the respondent Shri R. N. Singh, senior advocate has no objection.

Sri. V. D. Ojha, appearing for Ajai Kumar Garg states that vide his application dated 1.5.2003 he has submitted a bid of Rs. 80,00,000 (Rupees Eighty lacs only) on behalf of Ram Gopal Sharma son of Sri Jagdish Prasad Sharma, resident of Kushak Gall, Mathura in pursuance of the order of this Court. However, on the date fixed for filing the draft, a draft of only Rs. 14,00,000 (Rupees Fourteen lacs only) was deposited with a request that the drafts of remaining amount would be deposited by the next date. Even today, it has not been deposited. An oral request has been made that his client has been arrested in some case and, therefore, he has not been able to file the said drafts and seeks further time to file the drafts.

The learned counsel for the petitioner has deposited different drafts worth Rs. 50,00,000 (Rupees Fifty lacs only) along with details of the drafts with their dates, numbers and the amount mentioned. The aforesaid drafts along with its description are taken on record and the same shall be kept in a sealed cover by the Registrar General, who shall produce it before the Court as and when required.

Sri V. D. Ojha learned counsel for the applicant may file the drafts as stated by him by 20th August, 2003 in Court as last indulgence, lest the deposit suffers the consequence of order dated 20.5.2003.

List this petition on 20.8.2003."

4. The Court was closed on 20.8.2003, thus the matter was placed before the Court on 21.8.2003, but none of the parties were present and as such it was directed to come up in the list on 28.8.2003. On 28.8.2003 the matter was listed before another Judge who directed it to be placed before Hon''ble The Chief Justice, who vide order dated 2.9.2003, nominated it to me. This is how it has again come before me.

5. On 10.9.2003 when the matter was heard, Sri V. D. Ojha appearing for the bidder informed the Court that he has not been able to file the remaining drafts even in pursuance of the orders of this Court dated 20.5.2003 and 30.7.2003. He has moved an application for being granted further time to produce the draft. This prayer was rejected.

6. The learned counsel for the petitioners has urged that :

(i) the sale in their favour has become final and, therefore, the present impugned order was illegal.

(ii) the Court does not have any inherent power to pass the impugned order specially at the instance of one of the partners.

Mr. S. P. Gupta, learned senior counsel for the petitioner has urged that once the sale had been approved in their favour, it became final. He has further submitted that since the sale had been approved and the deed was directed to be drawn, the Court could not direct for further auction specially so after one month in view of Order XXI Rule 92. He has also submitted that in such Court sales fair market price was secondary but finality was paramount as people will lose faith in court sales because of frequent adjournments to obtain a still better price. His sheet anchor is the Division Bench decision of the Apex Court rendered in Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others,

7. Before proceeding any further, it would be useful to note that the sale is being conducted in pursuance of the directions of this Court passed in F.A. No. 40 of 1959 after fixing the shares of the partners at Rs. 24 lacs. Strictly speaking the sale is not under Order XXI, C.P.C., but the broad principles may apply even to such sales. Let us first examine the nature of the offer made by the petitioner. The court below, vide order dated 15.2.1979 and 15.3.1980 wanted to ascertain a fair value before the actual auction took place. With that end in view, it allowed the receivers etc. to obtain offers from parties. Only a couple of offers were received. One was of Dau Dayal which was also accepted by the Court. But on petitioner''s application, the said offer was rejected. Petitioner challenged Dau Dayal''s offer mainly on the ground that no public auction had taken place and as such the offer of Dau Dayal could not be accepted in the teeth of the clear directions of the Court dated 15.2.1979 and 15.3.1980 that the property should be sold by public auction after publication. Now the offer of the petitioner, which is of the same category as that of Dau Dayal, is sought to be protected by the petitioner. Petitioner is blowing both, hot and cold. It is not disputed that no public auction has been held nor any publication has been made in view of the

direction dated 15.2.1979 and 15.3.1980, therefore, for those very reasons which the petitioner canvassed against Dau Dayal, the offer of the petitioner could not have been finalised. While passing the impugned order, the court below was fully conscious of the circumstances and it has exercised its discretion quite fairly.

8. In Kayjay Industries case (supra), the facts were entirely different, that was a case of sale in execution of a money decree. The lower court in that case had come to a conclusion that the price offered after several adjournment was fair, but which was challenged by judgment debtor through various means and the Apex Court found that he was only delaying the inevitable. In that case auction was held and well known industrialist both in private and public sectors had participated. But in the case at hand a silent offer accepted without any apparent application of mind, cannot be approved. As such, the said decision would not apply in the present set of facts.

9. By and large, it is well recognised by now that public auctions are the best and safest methods of obtaining a fair market price, though there may be exceptions. The larger the public participation, fairer the price. The Apex Court in the case of Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, ; Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, and Chint Ram Ram Chand and Others Vs. State of Punjab and Others, have broadly approved of public auction to obtain a fair and approximate market price.

10. In the present case the Court did direct for public auction after publication, but it appears that while approving the offer of the petitioner it forgot those direction in a maze of countless applications for various purpose.

11. But Mr. Gupta is insistent that the Court does not have any inherent power to cancel an approved bid especially in view of Order XXI, Rule 92. For the sake of argument, even if Order XXI were to be applied, the alleged sale in favour of the petitioner was void as the mandatory provision of auction was not followed and that too despite the specific directions of the Court itself. In my opinion, the court below was fully justified in directing auction to take place. The order is both just and fair, therefore, it does not call for any interference under discretionary exercise of power under Article 226 of the Constitution.

12. Having come to the aforesaid conclusion, even assuming without admitting that three was some irregularities in the order, it has to be considered as to whether it was sufficient to quash the order. In a recent case the Apex Court in the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., has held that power of the High Court to interfere under Article 226 is limited. It cannot exercise powers of an appellate court, the exercise should only be for serious dereliction of duty or flagrant violation of the principles of law or justice. In my opinion, the order appears, both to be just and fair and there is no flagrant violation of any principles of law or Justice.

13. In view of the aforesaid the writ petition is hereby dismissed.

14. In the opening part of this judgment, the proceedings which have taken place have been noted. In order to find out approximate price as on date, parties were asked to give their price. The petitioner has deposited drafts worth rupees fifty lacs. Sri Ram Gopal Sharma son of Jagdish Prasad Sharma resident of Kushak Gali, Mathura, although had raised the bid to Rs. 80 lacs, but deposited the draft only for Rs. 14 lacs. He sought time on more than one occasions, to deposit the remaining at the pain of forfeiture, but failed to do so. However, even today he stands by the offer.

15. Let the matter be remanded to the appropriate court below (Mathura itself is a district now) which shall initiate and complete the public auction within six months after wide publicity in two english and two Hindi newspapers having very wide circulation, fixing a base price of Rs. 80 lacs as offered by said Sri Sharma, who will be held to his bid. It goes without saying that if the bid so received and finalised for more than 80 lacs, Sri Sharma would be entitled to the refund of his amount of rupees 14 lacs, if not, his amount would stand forfeited in favour of the firm and would be subjected to the orders passed for the accepted bid amount. So also the petitioner would be held to his bid, in case of some queer reason the bid falls below Rs. 50 lacs.

16. The petitioner would also be entitled to refunds of his bid if finally the bid is settled for more than fifty lakhs. The Registrar General of this Court is hereby directed to encash the draft of both the parties and deposit it in two different interest bearing short term account of six months which would be subject to the final orders passed by the trial court, the interest accrued thereon would be added to the respective accounts of the parties. The trial court is directed to seek payment of the aforeasid amount from the Registrar-General, of this Court when proceedings are finalised.

17. With the aforesaid observation and directions this writ petition is dismissed, but without any costs.