(2015) 01 MAD CK 0207

In the Madras High Court

Case No : W.A. No. 1378 of 2014 and M.P. No. 1 of 2014

Registrar APPELLANT

Vs

Hameed Enterprises and Others RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 1 CTC 696 : (2015) 3 LW 125 : (2015) 3 MLJ 37

Hon'ble Judges : M. Venugopal, J.;Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : Karthik, for the Appellant; T.K. Kulasekaran, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Satish K. Agnihotri, J.—The instant intra-court appeal arises from the order dated 18.09.2014 passed in W.P. No.29701 of 2012.

2. The factual matrix leading to filing of the writ petition is that in response to e-auction notice No.MSTC/SRO/Indian Institute of Technology Madras/3/Adyar/11-12/4660[41323], the writ petitioner/first respondent herein offered its bid for purchase of scraps. The second respondent was appointed as selling agent on behalf of the appellant herein/first respondent therein. The precondition for participation in the e-auction was to deposit a sum of Rs.5,00,000/- as pre-bid Earnest Money Deposit (for short "EMD") by way of demand draft on or before 12.09.2011 as the bid was to be opened on 13.09.2011. The writ petitioner made an highest offer to the tune of Rs.1,24,22,002/- and also deposited the requisite EMD amount before the specified date. The bid offered by several other bidders ranges from Rs.1,24,000/- to Rs.22,55,848/-. The writ petitioner being the highest bidder was informed by email dated 13.09.2011 at 10.40 p.m., stating that his bid has been accepted provisionally subject to approval of the appellant for the bid amount of Rs.1,24,22,002/-. He was further requested to make security deposit of an amount of Rs.12,42,200/- by way of DD/PO in favour of the appellant within seven days from the date of close of the

auction as per the terms and conditions of e-auction.

3. It appears, thereafter the writ petitioner, instead of writing to the selling agent, wrote to the Deputy Registrar of the appellant on 13.9.2011, informing that the first respondent / writ petitioner had wrongly quoted the figure as Rs.1,22,42,002/- instead of Rs.12,24,202/- and as such, a request was made to refund the EMD amount of Rs.5,00,000/-. An identical communication was sent to the selling agent, i.e., the second respondent, on 14.09.2011. Treating the aforestated letters as revocation of offer, the pre-bid EMD was encashed and sent to the appellant by the selling agent by communication dated 19.9.2011. It was confirmed subsequently by the electronic communication dated 22.09.2011.

4. Being aggrieved of forfeiture of the EMD, the writ petitioner made several representations for refund of the EMD amount. By communication dated 25.10.2012, the writ petitioner was informed that his offer to the tune of Rs.1,24,22,002/- was accepted and he was requested to deposit the security deposit within seven days from the date of close of the said auction and as such, he failed to comply with the same, exercising power under the terms and conditions of the auction, the pre-bid EMD amount was forfeited.

5. Thereagainst, the writ petitioner has come up with the instant writ petition, questioning the legality of the communication dated 25.10.2012 and further a direction to the appellant herein/first respondent and second respondent therein to return / refund the EMD amount of Rs.5 lakhs with interest at the rate of 12% per annum.

6. In the writ petition, the writ petitioner raised a contention that the offer of Rs.1,24,22,002/- was a typographical mistake, which was corrected immediately before the opening of the tender and as such, the appellant as well as the second respondent were informed well in advance to cancel the offer of the writ petitioner. To that effect, a letter was sent on 13.09.2011 and also on 14.09.2011, seeking refund of pre-bid EMD amount. Thus, the appellant and the second respondent herein were not entitled to forfeit the said amount. Secondly, the writ petitioner was communicated about forfeiture of the pre-bid EMD only on 25.10.2012. Thus, the writ petitioner is entitled to interest thereon.

7. The learned Writ Court, considering the issue of non mentioning of upset price in the e-auction notice, held that the respondents have not followed the mandatory procedure and as such, the same was not legal and proper. It was also held that the acceptance of the petitioner''s bid was only provisional subject to confirmation by the first respondent and therefore, the stage of forfeiture of EMD amount had not reached. It was held that since the sale was not confirmed, the forfeiture of the EMD amount was unsustainable in the eye of law. Accordingly, the writ petition was allowed with a direction to refund the forfeited EMD amount with 9% interest per annum.

8. Mr. Karthik, learned counsel appearing for the appellant would submit before us that the learned Judge has considered the issue of non mentioning of upset

price without there being any pleading by the writ petitioner in the writ petition. The issue was considered at hearing stage as the petitioner has not questioned the legality of forfeiture of pre-bid EMD on account of the fact that the e-auction proceedings itself was vitiated as no reserve price was mentioned in the e-auction. It is further contended that since the writ petitioner had accepted the terms and conditions and offered the highest amount of Rs.1,24,22,002/- which was also accepted, the issue of non mentioning of the upset price without there being any pleading, cannot be permitted to argue and considered.

9. It is further urged that the writ petitioner has failed to deposit the security deposit as required under the terms and conditions of e-auction and also making a request for withdrawal of the pre-bid EMD on 13.09.2011 amounts to revocation of offer. Lastly, it is contended that the sale could not be completed and the appellant suffered loss on account of withdrawal of the writ petitioner after the bid was accepted and he was requested to deposit the security deposit within a period of seven days. The appellant had also suffered loss as the auction was held subsequently, inviting tenders, which has caused loss to the appellant institute.

10. Per contra, Mr.T.K. Kulasekaran, learned counsel appearing for the writ petitioner / first respondent herein would submit that the offer of Rs.1,24,22,002/- was certainly a typographical mistake as no other bidders have offered more than Rs.22 lakhs. The offer of the petitioner was in fact Rs.12,24,202/- and accordingly, the authorities were informed much in advance. The writ petitioner also withdrew his offer by communication dated 13.9.2011 and requested to refund the pre-bid EMD. The sale was also not confirmed in favour of the writ petitioner and as such, forfeiture of pre-bid EMD was illegal and unauthorised and deserves to be quashed. It is next contended that the writ petitioner was informed only subsequently in October, 2012 and as such he suffered loss. Thus, the writ petitioner is entitled to interest at the rate of 12% per annum.

11. We have carefully considered the rival submissions and also examined the pleadings and documents appended thereto.

12. The incontrovertible facts which are evident on perusal of the pleadings are that in respect to the e-auction notice, the writ petitioner made an offer of Rs.1,24,22,002/-. It is also found on record that a communication was sent on 13.09.2011 to the Deputy Registrar of the first appellant, seeking refund of the EMD amount, stating that there was a mistake in quoting the amount. In fact, it was Rs.12,24,202/-. The second respondent, who was the selling agent responsible for the conduct of the auction, was informed subsequently vide communication dated 14.09.2011 to the same effect. The writ petitioner was informed vide electronic communication on 13.09.2011 at 10.40 p.m. by the second respondent that his bid to the tune of Rs.1,24,22,002/- had been accepted provisionally subject to approval by the seller. Accordingly, the writ petitioner was required to deposit 10% of the total value, i.e., Rs.12,42,200/-

within seven days from the date of close of the said auction. The auction was closed admittedly on 13.09.2011. The writ petitioner had informed to the selling agent, i.e., the second respondent, who had informed the acceptance of the bid on 13.09.2011 electronically by communication dated 14.09.2011. Thus, the contention of the writ petitioner that he had withdrawn from the offer before the auction was concluded is not correct and contrary to the records.

13. On the question as to whether mentioning of the reserve price or upset price in the auction notice is mandatory, the learned Single Judge, without there being any pleading, has considered the same and held that the requirement of setting out the upset price is mandatory. Thus, in the facts of the case where the writ petitioner has not questioned the legality of the proceedings, on this ground, we are not inclined to uphold the finding recorded by the learned Writ court and keep the question of law open to be decided in an appropriate case.

14. On perusal of the chart, indicating the Bid History (page 16 of the typed set of documents), the offer ranges from Rs.1,24,000/- to Rs.22,55,848/-. Thus, the findings of the learned Single Judge, accepting the contention of the writ petitioner that it was typographical mistake appears to be correct as no prudent business man would offer the amount of bid too high, which may not be the value of goods. Thus, without going into the question as to whether the appellant was entitled to the EMD amount as it appears to be the case of revocation of offer and also in view of the fact that the learned counsel for the appellant has not pressed the point strenuously, we are of the considered opinion that the writ petitioner is not entitled to any interest on the EMD.

15. The action of the appellant in accepting the bid amount of the writ petitioner was also not proper. When the figure quoted was astronomical and certainly much more than the value of the scraps comparing with the amount quoted by other bidders, the appellant ought to have examined the fact as to whether it was a mistake or genuine. In such a situation, the appellant ought not to have acted in haste in accepting the offer and conveying immediately in the late night to the writ petitioner requiring him to deposit the security money. In this background, it can safely be held that there was a typographical mistake in the amount quoted by the writ petitioner. Thus, both parties were at fault. What is good for the goose is good for the gander. In that event, the appellant cannot be permitted to take advantage of technicality. Thus, the direction to refund the EMD amount was rational and proper.

16. It is also not in dispute that on account of failure of auction, wherein the writ petitioner was the highest bidder for the amount quoted by him though it may be a typographical mistake, the second highest bidder was not given opportunity and the first appellant was forced to conduct second auction for sale of its scraps. In that process, admittedly the appellant had incurred expenses to the tune of Rs.79,904/-. The appellant cannot be saddled with the said expenses on account of the fault committed by the writ petitioner. Thus, the order of the learned Writ Court to refund the EMD after deducting the expenses is upheld.

17. Resultantly, we hold that the writ petitioner / first respondent is not entitled to any interest on the EMD amount and the appellant shall refund the EMD amount after deducting the expenses incurred by them for conducting fresh auction. Accordingly, the writ appeal is partly allowed. No costs. Consequently connected miscellaneous petition is closed.