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**(1958) 12 CAL CK 0022**

**In the Calcutta High Court**

**Case No :** A.F.O.O. No. 176 of 1956

Shankarlal Poddar APPELLANT

Vs

Gobinda Prosad Lath and Others RESPONDENT

**Date of Decision :** 11-12-1958

**Acts Referred:**
Companies Act, 1913 — Section 183(3), 202

**Citation :** AIR 1959 Cal 324 : (1959) 1 CALLT 349 : (1960) 30 CompCas 187

**Hon'ble Judges :** K.C. Das Gupta, C.J;R.S. Bachawat, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

K.C. Das Gupta, C.J.—This appeal is against an order of P.B. Mukharji, J., directing the acceptance of a bid of Rs. 2,25,000/- and the sale of lot No. 1 of certain properties to Banshidhar Shankarlal and approving and confirming the same and a consequential order giving the Liquidators who had conducted the sale liberty to draw their remuneration out of the deposit of the purchase price after passing their accounts and certain other consequential orders, which need not be detailed. It appears that on 8-9-1956, a sale was held at the office of Gobinda Prosad Lath and Shashi Bhusan Tewari, Joint Receivers and Liquidators, of the property consisting of machinery and other goods. The sale started at about 2 p.m.--the opening bid being the sum of Rs. 1,50,000/-. The successive bids were Rs. 2,00,000/-, Rs. 2,05,000/-, Rs. 2,10,000/-, Rs. 2,25,000/-, Rs. 2,30,000/-, Rs. 2,40,000/-. Rs. 2,50,000/-, Rs. 2,55,000/-, Rs. 2,60,000/-Rs. 2,65,000/-, Rs. 2,70,000/-, Rs. 2,75,000/-, Rs. 2,80,000/-, Rs. 2,85,000/-, Rs. 2,90,000/- and then--after the parties had been allowed, to advance the bid even by two thousand rupees--were Rs. 2,92,000/-, Rs. 2,94,000/-, Rs. 2,96,000/-, Rs. 2,98,000/-, Rs. 3,00,000/-, Rs. 3,05,000/-, Rs. 3,07,000/-, Rs. 3,09,000/-, Rs. 3,11,000/-, Rs. 3,13,000/-, Rs. 3.15,000/-, Rs. 3,17,000/-, Rs. 3,19,000/-, Rs. 3,21,000/-, Rs. 3,25,000/-, Rs. 3,27,000/-, Rs. 3,30,000/-, Rs. 3,32,000/-, Rs. 3,35,000/- and Rs. 3,37,000/-. The highest bid of Rs. 3,37,000/-

 

was by Nandlal Agarwalla. As no further bid was offered, Nandlal Agarwalla was declared the highest bidder and was asked to put in immediately 25 per cent. of the amount bid. Nandlal left the place. But after waiting about 20 minutes, the Liquidators treated his omission to pay by that time as a default and put the property up for sale again. This time the highest bid was only Rs. 2,25,000/-, of Banshidhar Shankarlal It is worth mentioning that at the previous sale which was infructuous, because Nandlal Agarwalla did not put in the deposit, the competition at the later stage was between Banshidhar Shankar Lal and Nandram Agarwalla. But apart from them, there was one S.K. Chakraborty whose bid at the previous sale was up to Rs. 2,98,000/-. S.K. Chakra borty took part in the later sale also, but gave only one bid of Rs. 2,00,000/-. Several other persons who had at the previous sale bid well over Rs. 2,25,000/- appear to have taken no part in the bidding at the later sale.

2. The main contention which was raised on behalf of the creditor Shankarial Poddar-- on whose prayer, it may be mentioned, the company had been wound-up and Liquidators appointed--in opposing the Liquidators'' prayer that the bid of Rs. 2,25,000/- by Banshidhar Shankarial be accepted and the sale to him confirmed, was that there was undue haste in holding the sale again that very day, specially when many of the persons, who had taken part in the earlier sale, had already left. As already stated, the learned Judge has made an order approving the sale and directing the acceptance of the bid of Rs. 2,25,000/- by Banshidhar Shankarial.

3. It is against that order, that this present appeal has been preferred.

4. Mention has first to be made of a point which appears to have been taken halfheartedly that an appeal does not lie against that order. I have said "halfheartedly'' because it was raised at a late stage of the hearing of the appeal and was not raised, as it should have been, as a preliminary point at the commencement of the hearing. Be that as it may, we thought it proper to consider the matter and have come to the conclusion that an appeal lies. The order that has been made is clearly one under the provisions of Section 183(3) of the Indian Companies Act under which the Official Liquidator may apply to the Court in manner prescribed for direction in relation to any particular matter arising on the winding-up. It is urged that any order made by the Court on such application is an administrative order and so an appeal does not lie. There can be, no doubt that if the order made is administrative in nature, an appeal would not lie under the provisions of Section 202 of the Companies Act. It is quite clear that many orders may have to be passed by a Court in connection with the winding-up of a company on the application of the Official Liquidator which may have nothing judicial in its nature. Orders regarding engagement of Counsel, orders regarding holding of meetings and many other orders on application of the Official Liquidator, will clearly be administrative orders, so that no appeal would lie. There are, however, in my opinion, cases where the Court decides on the application of the Liquidator that there is a matter in dispute between two

 

parties and that it should be decided judicially. When it decides this, it will accept affidavits from parties, hear Counsel and apply its judicial mind to the decision of the dispute. Whether or not against any particular order made u/s 183(3) an appeal would lie, would depend on the action the Court had taken. If it has treated the matter as one of dispute between the parties which has to be judicially determined, the order made by it should reasonably be considered, in my opinion, as a judicial order and not an administrative order. Once that conclusion is reached, I fail to see how it can be said that it is not a judgment within the meaning of Clause 15 of the Letters Patent. It is un necessary to refer to any of the numerous cases in which connotation of the word ''judgment'' as used in that clause has been considered. It is sufficient to refer to the observation of Couch, C. J., where he said :

"We think judgment in Clause 15 means a decision which affects the merits of a question between the parties by determining some right or liability.''"

In the present case the decision given by the learned Judge certainly affects the merits of a question raised between two parties and it does determine the question of rights between tile parties. In my opinion, therefore, there is no substance in the contention that no appeal lies.

5. Coming to the merits of the appeal, we have to remember that the approval of a sale and the acceptance of a particular bid as a sufficient bid is a matter very much in the discretion of the Judge and unless circumstances overwhelmingly show that the matter has not received the Judge''s proper attention and there has been no real exercise of judicial discretion, this Court ought not to interfere. I am constrained to say, however, that on consideration of the very peculiar features of this case, I have come to the conclusion that this is a case where there has not been proper exercise of judicial discretion. The outstanding feature which strikes anybody, who would even have a cursory glance at the bid-sheet, is that at the first sale the sum of Rs. 2,25,000/- was exceeded by the very sixth bid. From the 6th to the 36th bid all the amounts bid were over Rs. 2,30,000/-. I have already set out the sums of the different bids at the first sale and this shows keen competition not only between Nandlal Agarwala and Banshidhar Shankarial who was the ultimate purchaser, but between several other persons. Thus New India Transport Co., whose first bid was Rs. 1,50,000/- went up a little later to Rs. 2,25,000/-, then to Rs. 2,40,000/- and ultimately to Rs. 2,55,000/-. Babulal Bhagwandas who started as the second bidder at the first sale with a bid of Rs. 2,00,000/-took an active part--his successive bids being Rs. 2,50,000/-. Rs. 2,65,000/- and ultimately Rs. 2,75,000/-. One Chhabildas Agarwalla started as the 15th bidder at the first sale and gave a bid of Rs. 2,85,000/-. Neither Babulal Bhagwandas nor Chhabillal Agarwalla nor New India Transport Co. appeared among the bidders at the second sale. Is it proper to think that they thought better of the matter and deliberately did not take part in the second sale? That, however, would, in my opinion, be an unrealistic view of the matter. It was definitely stated in an affidavit by Shankarial Poddar in paragraph 32 that

 

after Nandlal Agarwalla was declared the highest bidder, various bidders left the sale room. It is important to notice that this statement that many bidders left, has not been challenged. If one looks at the bid-sheet of the two sales as a whole, the conclusion is, in my opinion irresistible to anyone who would apply a judicial mind to the facts that persons who would have been keen to get the property at sums much higher than Rs. 2,25,000/- had left and that opportunity was taken of this absence of rival bidders by Banshidhar Shankarial in getting the second sale stopping with his highest bid of Rs. 2,25,000/-. It is interesting to note that only a little earlier this very Banshidhar had bid Rs. 3,35,000/- for this very property and even his earlier bids were all well over Rs. 2,25,000/-.

6. One thing which the Court is always anxious to secure in matters of this nature is that there should be fair sale of the properties, so that the highest amount may be available for the creditors and other interested persons. Has there been a fair sale?--That is the question which every Court has to address itself to in deciding whether the Court''s seal of approval should be given to a sale. In my judgment, a Court applying its judicial mind to the matter for the use of its judicial discretion was bound to come to the conclusion that there had not been a fair sale and that because of the absence of persons, who were likely to come and take part in this bidding, if proper opportunity had been given, there was not really a regular sale.

7. I think it is unnecessary to refer to certain other objections which were raised as regards Banshidhar Shankarlal''s being allowed to put in only 10 per cent. of the money instead of 25 per cent. as mentioned in the conditions of sale. In view of the fact that the sale should be held to be irregular for the reasons already mentioned, I am of opinion that the learned Judge did not exercise proper judicial discretion in making the order that he did.

8. I would, therefore, allow the appeal, set aside he order of the learned Judge and dismiss the application.

9. The purchaser, Banshidhar Shankarlal, to whom possession was made over on the basis of the purchase is directed to restore possession to the Liquidators in two months.

10. Banshidhar Shankarlal undertakes, to the Court through his Counsel to keep the property insured and also not to sell or transfer or remove any of the capital assets of the company till possession is actually delivered.

11. All the appearing parties will get their costs out of the assets.

12. Joint Receivers will get their costs as between attorney and client.

R.S. Bachawat, J.

13. I agree.

 