
(2010) 04 RAJ CK 0095
In the Rajasthan High Court

Smt. Rekha Agrawal

APPELLANT

Vs

RFC and Others

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2010) 04 RAJ CK 0095

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—Petitioner who was one of the bidders in auction proceedings initiated by Rajasthan Financial Corporation, has filed the instant petition assailing order dt.30/10/2006 (Ann.4) whereby while cancelling approval of the sale of auctioned industrial plot, the respondents forfeited a sum of Rs. 41,000/- having been initially deposited at the time of auction having taken place on 18/10/1995.

2. It appears from material on record that a loan of Rs. 6.80 lacs was sanctioned to respondent-3-Firm (M/s National Garnetings Ltd) on 27/02/1986 and Rs. 5,57,300/-was disbursed but the Firm failed to make repayment of dues; as such its Unit was taken into possession on 15/04/1993 u/s 29 of the State Financial Corporations Act, 1951 towards loan dues of Rs. 10,91,058/-and accordingly, was put to auction on 18/10/95 wherein Vishnu Agrawal (petitioner's husband) participated and offered the highest bid offer of Rs. 8.80 lacs, which was accepted vide sale approval letter dt.18th/22nd November, 1995 (Ann.1) - as per terms & conditions whereof, he was required to make payment of Rs. 2,20,000/- (25% of auction sale price) within 15 days from the date of sale approval letter and so also to execute an agreement to sale within 30 days and to take over possession of the auctioned assets, which in instant case the petitioner's husband failed to comply with. There was a further rider that in case possession of the assets is not taken by auction purchaser within 30 days, the Corporation will be at liberty to forfeit the amount deposited by him at the time of auction

viz. initial deposit @ 5% of the bid.

3. However, respondent-3 Firm being original promoter, filed a declaratory suit (No. 143/1995) before the Addl. Civil Judge (Junior Division) No. 2, Alwar on 23/11/1995 assailing the auction proceedings dt.18/10/95 and the trial Court granted temporary injunction vide order dt.29/11/1995 directing the parties to maintain status quo as regards property in dispute, as referred to in para 3 of the reply. It is pertinent to mention that auction purchaser was not a party to the suit filed by respondent-3 (Firm).

4. The petitioner's husband in fact has never taken any steps since the year 1995 to comply with the terms & conditions of sale approval letter (Ann.1); however, filed an application U/O.1, R.10, CPC, on 23/12/2000 seeking impleadment as defendant in the declaratory suit filed by respondent-Firm wherein it was averred that it came to his notice through their counsel only on 22/12/2000 about the suit being pending and if allowed, will adversely affect their rights. The said application was allowed by the trial Court and petitioner's husband was impleaded as defendant to the suit filed by respondent- Firm vide order dt.20/09/2001.

5. It appears that temporary injunction was finally vacated on 13/03/2003 and accordingly, the petitioner submitted application in the office of respondents-1 & 2 that in view of temporary injunction being vacated on 13/03/2003, the order may be issued to deposit 25% of bid/sale amount and the possession of the auctioned Unit may be handed over to the petitioner. However, respondent (RFC) on account of having failed to fulfill the terms & conditions of sale approval letter (Ann.1) dt.18/11/95, forfeited initial deposit of Rs. 41,000/-vide order dt.30/10/2006 (Ann.4) - against which petitioner has approached by way of instant petition.

6. Counsel for petitioner submits that petitioner's husband was the highest bidder having offered bid of Rs. 8.80 lacs which was approved by respondent-Corporation vide letter dt.18th/22nd November, 1995 (Ann.1) but because of temporary injunction being granted by learned trial Court, he was precluded from depositing 25% of the bid amount and to comply with terms & conditions of sale approval letter (Ann.1) and that apart, on temporary injunction being vacated on 13/03/2003, immediately the application was submitted seeking order from respondent (RFC) for depositing 25% of the bid amount of auction sale and for delivery of possession whereof; in such circumstances, order passed by respondent (RFC) dt.30/10/2006 canceling the sale approval letter and forfeiting the initial bid amount deposited of Rs. 41,000/- on the date of auction, deserves to be set aside.

7. Counsel further submits that petitioner is ready to deposit 25% of the auction sale proceeds in terms of sale approval letter (Ann.1); as such possession of the auctioned assets put to auction on 18/10/95 may be handed over to the petitioner.

8. In reply to the petition, the respondents (RFC) inter-alia averred that when the petitioner failed to comply with terms & conditions of sale approval letter dt.18th/22nd November, 1995, respondents were justified in forfeiting the initial amount deposited on the date of auction vide order impugned and the defence taken by petitioner that temporary injunction being granted by learned trial Court, precluded petitioner's husband to comply with terms & conditions of sale approval letter, is factually incorrect since application was filed seeking permission to implead on 23/12/2000 and in para 5, it has been averred that on 22/12/2000 it came to his notice through counsel that there is a suit pending, which may adversely affect his rights; as such atleast injunction if any being granted by learned trial Court could not be taken as defence by petitioner in not complying with terms & conditions of sale approval letter dt.18/11/1995; as such the respondents (RFC) were within their rights to forfeit initial deposit while passing order impugned.

9. This Court has considered contentions advanced by Counsel for parties and with their assistance, perused material on record. Facts having remained uncontroverted on record that in terms of approval of sale of Unit -M/s National Garneting Ltd under auction having taken place on 18/10/1995, being the highest bidder, petitioner's husband was under obligation to deposit 25% (Rs. 2.20 lacs) of auction sale within 15 days under Clause3 and so also to execute agreement to sale within 30 days under Clause7 from the date of issuance of sale approval letter (Ann.1) and to take over possession of the industrial Unit under auction. However, as per Clause9, it was stipulated that if possession of the auctioned Unit is not taken within 30 days, the Corporation will be at liberty to forfeit the amount deposited at the time of auction. Indisputably, the petitioner had not complied with terms & conditions of sale approval letter dt.18/11/95 (Ann.1).

10. The defence taken by the petitioner that he was precluded because of interim injunction being granted by the learned trial Court is of no substance for the reason that for the first time, an application was filed by petitioner's husband on 23/12/2000 seeking impleadment as defendant to the suit filed by respondent-Firm; and in para 5 whereof, it has been categorically averred that it came to his notice through counsel on 22/12/2000 that there is a suit pending and the interim injunction has been granted by the learned trial Court, which may adversely affect his rights; as such from the material on record, it clearly emerges that from the year 1995 till 2000, it was never within the knowledge of petitioner's husband that there was an injunction being granted by trial Court; in such circumstances, the defence taken by the petitioner is totally fallacious that he was willing to deposit 25% of the sale under auction, and that being so, he submitted application with a prayer to deliver possession of the auctioned Unit and rights of the petitioner could not have accrued, since he failed to comply with terms & conditions of sale approval letter (Ann.1) and he cannot seek any benefit of interim injunction being granted by the learned trial Court. At the same time, this fact cannot be ruled out that there was an interim injunction being

granted by the learned trial Court, which was finally vacated on 13/03/2003 - pursuant to which the application was filed on 22/03/2003, as such the respondents (RFC) can not be said to be justified in the facts of instant case in forfeiting Rs. 41,000/- as referred to in the order impugned, having been deposited at the time of auction, and the petitioner is entitled for the refund whereof alongwith interest.

11. Consequently, writ petition is partly allowed; and the order dt.30/10/06 (Ann.4) to the extent of forfeiture of Rs. 41,000/- having been deposited as 5% at the time of auction is set aside. Respondents-1 & 2 are directed to refund Rs. 41,000/- deposited at the time of auction on 18/10/1995, along with interest @ 6% (six) per annum from the date of its deposit till actual payment, which should be sent by A/c payee cheque/bank draft at the address of petitioner mentioned in writ petition or furnished by petitioner's counsel. The respondent shall ensure compliance within two months from today. No costs.