

(2017) 09 DEL CK 0127

In the Delhi High Court

Case No : Civil Writ Petition No. 8576 Of 2017, Civil Miscellaneous No. 35275, 35276 Of 2017

Sunil Gupta

APPELLANT

Vs

Canara Bank And Anr

RESPONDENT

Date of Decision : 25-09-2017

Acts Referred:

Income Tax Rules, 1961 — Rule 57, 58, 86, 87

Code Of Civil Procedure, 1908 — Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 86

Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 29

Citation : (2017) 09 DEL CK 0127

Hon'ble Judges : Hima Kohli, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Jaya Tomar, J.P. Gupta

Final Decision : Dismissed

Judgement

1. The petitioner-auction purchaser is aggrieved by the order dated 13.09.2017, passed by the learned DRAT, dismissing his appeal against the order

dated 13.06.2017, passed by the learned DRT-III, Delhi, upholding an order dated 22.02.2017, passed by the Recovery Officer in RC No. 312/2015

entitled "Canara Bank vs. Pawan Mittal".

2. Briefly stated, the relevant facts of the case are that the respondent/Bank decided to conduct an e-auction in respect of premises No.313/33-B,

measuring 90 square yards, on a portion of old plot No.7, P.S. Sarai Rohilla, abadi known as Shoes Market, Main Road, Inder Lok, Delhi-35.

3. As per the terms and conditions of the e-auction conducted by the respondent/Bank, the highest bidder was required to deposit 25% of the bid

amount within 24 hours and the balance 75%, within 15 days reckoned from the date of conducting the bid. The petitioner herein had participated in

the aforesaid auction on 06.09.2016 and was declared as the highest bidder. It is an undisputed position that the petitioner had deposited 25% of the

bid money within the stipulated timeline. However, he did not deposit the balance 75% of the bid amount within the period of 15 days, reckoned from

the date of the auction of the property i.e. on or before 21st September, 2016.

Learned counsel for the petitioner submits that the balance 75% was deposited with a delay of two days on account of the indisposition of the petitioner

and having regard to the fact that his was a genuine case, the Recovery Officer ought to have condoned the delay of two days in depositing the

balance 75% of the bid money. Instead, vide order dated 22.02.2017, the Recovery Officer held that Rule 57 and Rule 58 of the IInd Schedule of the

Income Tax Act, 1961 being mandatory in nature, it did not empower him to condone the delay. As a result, the earnest money deposited by the

petitioner, to the tune of Rs.4 lakhs was directed to be forfeited and the auction was set aside.

4. Aggrieved by the above order passed by the Recovery Officer, the petitioner filed an appeal before the learned DRT which was also dismissed on

13.06.2017. Dissatisfied by the said decision, the petitioner approached the learned DRAT by filing an appeal. Vide order dated 13.09.2017, the

DRAT upheld the order dated 13.06.2017 passed by the DRT and dismissed the petitioner's appeal.

5. Learned counsel for the petitioner submits that to non-suit the petitioner, the Recovery Officer, the DRT as also the DRAT have placed reliance on

the judgment of the Supreme Court in the case of C.N.Â ParamasivanÂ &Â Anr.Â Vs.Â SunriseÂ PlazaÂ Tr.Â PartnerÂ &Â Ors reported

as AIR 2013 SC 2941, without examining the fact position of the present case. She urges that in the captioned caseÂ there were several defaults

committed by the defaulting parties, which is not the position here and that itself is a distinguishing factor which has not been kept in mind by the

DRAT while upholding the orders passed by the DRT.

6. The decision to reject the request of the petitioner for condonation of delay of two days in depositing the balance 75% of the bid amount is premised

on Rule 57 and 58 of the IInd Schedule of the Income Tax Act, 1961 that are reproduced herein below for ready reference:-

57(1) On every sale of immovable property, the person declared to be the

purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

58. In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.â??

7. A glance at the aforesaid Rules makes it apparent that the auction purchaser is required to deposit 25% of the bid amount immediately and in the event of default, the said amount is liable to be forfeited and the property put to re-auction. After adjusting 25% of the bid amount, the balance is required to be paid by the auction purchaser on or before the 15th day from the date of the sale of the property. In the present case, the auction having been conducted by the respondent/Bank on 06.09.2017, the petitioner ought to have deposited 25% of the bid amount right away, which he had done by depositing a sum of Rs.5,50,000/- with the Bank. The balance 75% of the bid amount, i.e., a sum of Rs.28,45,000/-, was required to be deposited by the petitioner with the respondent/Bank on or before 21.09.2016. However, the petitioner defaulted by two days in depositing 75% of the bid amount, before the cut-off date. As a result, vide order dated 22.02.2017, the Recovery Officer rejected his request for extension of time and cancelled the auction. Further, in exercise of his powers under Rule 58, the Recovery Officer directed that the earnest money deposit of Rs. 4 lakhs i.e. 10% of the reserve price deposited by the petitioner, be forfeited.

8. In the case of C.N. Paramsivan & Anr. (supra), the Supreme Court had the occasion to examine the decision of the Madras High Court where an auction conducted by the Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act (in short â??the RDDB Actâ??) was held as illegal and void due to non-compliance of the provisions of Rule 57 in

the Second Schedule of the Income Tax Act, 1961, applicable to recovery of debts due, in terms of Section 29 of the Act. Section 29 states as below:-

29. Application of certain provisions of Income-tax Act.—The provisions of the Second and Third Schedules to the Income-tax Act,

1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary

modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the assessee shall be construed as a reference to the

defendant under this Act.

9. On examining the above provisions, the Supreme Court held that there is no manner of doubt that the rules in the Income Tax Act are applicable, as

far as is possible and with modification as if the said rules are engrafted in the RDDB Act, instead of the Income Tax Act. The said view was

expressed in the following words:-

16. A bare reading of the above leaves no manner of doubt that the rules under Income Tax Act were applicable only as far as

possible and with the modification as if the said provisions and the rules referred to the amount of debt due under the RDDB Act instead

of the Income Tax Act. The question is whether the said two expressions render the provisions of Rule 57 directory no matter the same is

couched in a language that is manifestly mandatory in nature.

17. Legislation by incorporation is a device to which legislatures often take resort for the sake of convenience. The phenomenon is widely

prevalent and has been the subject matter of judicial pronouncements by Courts in this country as much as Courts abroad. Justice G.P.

Singh in his celebrated work on Principles of Statutory Interpretation has explained the concept in the following words:

Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim

reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by

reference into a later Act, the provisions so incorporated become part and parcel

of the later Act as if they had been â??bodily transposed into it. The effect of incorporation is admirably stated by LORD ESHER, M.R.: â?? If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it.

Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times

necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by LORD BLACKBURN:

â??When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense it bore in the original

Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the

section meant, though those other sections are not incorporated in the new Act.â??

21. Applying the above principles to the case at hand Section 29 of the RDDB Act incorporates the provisions of the Rules found in the

Second Schedule to the Income Tax Act for purposes of realisation of the dues by the Recovery Officer under the RDDB Act. The

expressions â??as far as possibleâ? and â??with necessary modificationsâ? appearing in Section 29 have been used to take care of

situations where certain provisions under the Income Tax Rules may have no application on account of the scheme under the RDDB Act

being different from that of the Income Tax Act or the Rules framed thereunder. The provisions of the Rules, it is manifest, from a careful

reading of Section 29 are attracted only in so far as the same deal with recovery of debts under the Act with the modification that the

â??amount of debt? referred to in the Rules is deemed to be one under the RDDB Act. That modification was intended to make the position

explicit and to avoid any confusion in the application of the Income Tax Rules to the recovery of debts under the RDDB Act, which

confusion could arise from a literal application of the Rules to recoveries under the said Act. Proviso to Section 29 further makes it clear

that any reference â??to the assesseeâ? under the provisions of the Income Tax

Act and the Rules shall be construed as a reference to the defendant under the RDDB Act.

It is noteworthy that the Income Tax Rules make provisions that do not strictly deal with recovery of debts under the Act. Such of the rules

cannot possibly apply to recovery of debts under the RDDB Act. For instance Rules 86 and 87 under the Income Tax Act do not have any

application to the provisions of the RDDB Act, while Rules 57 and 58 of the said Rules in the Second Schedule deal with the process of

recovery of the amount due and present no difficulty in enforcing them for recoveries under the RDDB Act. Suffice it to say that the use of

the words "as far as possible" in Section 29 of RDDB Act simply indicate that the provisions of the Income Tax Rules are applicable

except such of them as do not have any role to play in the matter of recovery of debts recoverable under the RDDB Act.

The argument that the use of the words "as far as possible" in Section 29 is meant to give discretion to the Recovery Officer to apply

the said Rules or not to apply the same in specific fact situations has not impressed us and is accordingly rejected."

(emphasis added)

10. The Supreme Court thus concluded that though the expression "as far as possible", may be indicative of a certain inbuilt flexibility, the scope

of that flexibility extends only to what is "not at all practicable". In other words, the use of the words "as far as possible" in Section 29 of the

RDDB Act does not vest any discretion in the Recovery Officer to apply the said Rules or relax it in a specific fact situation. Declaring that Rule 57

and 58 of the Income Tax Rules are mandatory in character, the Supreme Court concluded thus:-

"28. It is clear from a plain reading of the above that the provision is mandatory in character. The use of the word "shall" is both

textually and contextually indicative of the making of the deposit of the amount being a mandatory requirement. The provisions of Rules 57

and 58 of the Income-tax Rules, have their equivalent in Order XXI, Rules 84, 85 & 86 of the C.P.C. which are *pari materia* in language,

sweep and effect and have been held to be mandatory by this Court in *Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed*

Mahmed and Anr. (AIR 1954 SC 349) in the following words:

8. The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of

the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree- holder is

entitled to the advantage of a set-off. The provision for payment is, however, mandatory...

(Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the

discretion ends but the obligation of the Court to re-sell the property is imperative. A further consequence of non-payment is that the

defaulting purchaser forfeits all claim to the property (Rule 86)...

9...These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules,

there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.

xx xx xx xx

11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the

provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately on the person being declared as a purchaser

and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at

all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money

in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question

of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale

proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the

previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances

of the present case there was no sale and the purchasers acquired no rights at all.

32. In the light of the above we see no reason to hold that Rules 57 and 58 of the Income-tax Rules are anything but mandatory in nature,

so that a breach of the requirements under those Rules will render the auction non est in the eyes of law.â??

(emphasis added)

11. In the present case, there is no doubt that the delay on the part of the petitioner in depositing the balance 75% of the bid amount was only of two

days, but having regard to the fact that the provisions of Rules 57 and 58 are mandatory in nature and do not leave any scope of discretion in the

hands of the Recovery Officer to relax the terms in a particular fact situation, we do not find any infirmity in the findings returned by the DRAT that

the decision of the Recovery Officer as also that of the DRT is in consonance with the law laid down by the Supreme Court.

12. We may note here that the learned counsel for the petitioner has sought to urge before us that the principal borrower was never opposed to the

condonation of delay and has not filed any objections. This cannot be a ground for us to interfere in the matter in view of the legal position stated

above. Further, learned counsel for the petitioner points out that the respondent/Bank had initially given its consent to waive the delay in making the

deposit. Learned counsel for the respondent/Bank, who appears on advance copy, submits that this may have been the position earlier, but now

intending buyers are approaching the Bank with offers that are higher than the bid amount offered by the petitioner. Even if, the respondent/Bank

would have supported the case of the petitioner, the legal position cannot change having regard to the view expressed in the case of C.N. Paramisvan

& Anr. (supra).

13. Lastly, learned counsel for the petitioner states that at least the amount directed to be forfeited by the Recovery Officer may be refunded to the

petitioner, after deducting the actual expenses incurred by the Bank. We decline to issue any such order. It is relevant to note that though the

Recovery Officer was empowered to forfeit the entire bid amount deposited by the petitioner, but he has refrained from doing so and has only directed

forfeiture of 10% of the earnest money. We do not find any justification to scale down the said amount.

14. The present petition is, therefore, held to be devoid of any merits and is

dismissed in limine. Needless to state that as and when the respondent/Bank conducts a fresh auction of the subject premises, the petitioner shall be at liberty to participate therein along with other bidders.