

APPELLATE CIVIL

Before D. K. Mahajan and Gopal Singh, JJ.

UNION OF INDIA,—Appellant.

versus

RAM LAL, CONTRACTOR,—Respondent.

Regular First Appeal No. 342 of 1962

January 6, 1971

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 36—Bid at the sale of evacuee property by public auction—Failure of the District Rent and Managing Officer to communicate acceptance of the bid within seven days in terms of the conditions of auction—Bidder revoking the bid—Suit for the refund of the earnest money deposited by the bidder—Whether barred by section 36—Terms of auction providing the offer of the bid not to be accepted at the time of auction but to be communicated after the expiry of seven days from the date of auction—Bidder at such auction—Whether entitled to withdraw the bid prior to the communication of the acceptance.

Held, that there is no provision in the body of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, or the rules made thereunder showing that the District Rent and Managing Officer is empowered to withhold the amount of the earnest money paid by a bidder of an evacuee property at a public auction if he fails to communicate acceptance of the offer of the bid made by the bidder, when in terms of the auction, the District Rent and Managing Officer is under contractual obligation to communicate the acceptance. He has no power or authority to withhold the amount, when he does not care to communicate the acceptance of the offer to the bidder in terms of the auction. A suit for refund of such earnest money is not governed by any provision of the Act, but is governed by the conditions of the contract entered into between the parties, as incorporated in the terms of auction. In the absence of any specific provision in the act laying down that jurisdiction of civil Court to entertain such a suit is barred, the case will be governed by section 9 of the Code of Civil Procedure, which provides that civil Courts have jurisdiction to try all suits of civil nature. As the claim of the plaintiff to the refund of the earnest money has arisen as a result of breach of terms of the auction, the blame for which lies squarely at the door of the rehabilitation authorities. Section 36 of the Act has nothing to do with the case and no shelter can be sought thereunder to oust the jurisdiction of the Civil Court.

(Para 6)

Held, that where the terms of auction provide that on payment of 1/10th of the amount of the bid, the offer of bid is not to be accepted there and then but is postponed to a date after the expiry of seven days from the date of auction, the plaintiff-bidder is entitled to withdraw his offer by way of bid prior to the communication of acceptance of that offer.

(Para 7)

Regular First Appeal from the decree of the Court of Shri Mahesh Chandra, Sub-Judge, Ist Class, Karnal, dated the 24th day of July, 1962, granting the plaintiff a decree for the recovery of Rs. 12,658 against the defendant with proportionate costs and further ordering that the defendant would make the payment of the decretal amount within 3 months.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA, WITH MR. S. K. JAIN, ADVOCATE, for the appellants.

NEMO,—for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

Gopal Singh, J.—(1) This is regular first appeal by the Union of India defendant against Ram Lal plaintiff from the judgment of Shri Mahesh Chander, Sub-Judge, Ist Class, Karnal, dated July 24, 1962: decreeing plaintiff's suit for Rs. 12,658.

(2) An evacuee plot bearing number 22/H situate in the town of Karnal was put to public auction held on December 26, 1959 by the District Rent and Managing Officer, Karnal. The highest bid of the plaintiff of Rs. 1,17,400 was accepted. Under the terms of auction, the plaintiff deposited Rs. 11,740. Another term of the auction was that the acceptance of the offer of the plaintiff to purchase the plot at that price was to be communicated to him by the District Rent and Managing Officer seven days after the date of the auction. Finding that the acceptance of the bid had not been communicated after the expiry of seven days from the date of the auction, the plaintiff addressed several letters to both the District Rent and Managing Officer and the Assistant Regional Settlement Commissioner, Patiala, complaining against the non-communication of the acceptance of his offer. *Inter alia*, he addressed a letter on January 29, 1960, to the Assistant Regional Settlement Commissioner, Patiala intimating that if acceptance of his bid was not communicated to him within 15 days of the receipt of that letter, his offer by bid would stand revoked. There being failure on the part of the addressee of that letter to communicate within the period of notice about the acceptance of the bid, the plaintiff wrote another letter to the District Rent and Managing Officer on February 18, 1960, communicating revocation of his offer. In that letter he also requested for the amount of the earnest money paid by him at the time of auction being refunded to him. Another registered letter acknowledgement due was sent by

the plaintiff to the said officer on March 9, 1960, reiterating the stand taken in the earlier letter by saying that the offer stood finally withdrawn and that the amount of earnest money be paid back to him. Finding that no reply was forthcoming from the side of the defendant and the amount deposited was not being refunded, the plaintiff sent on March, 23, 1960, notice under section 80, Civil Procedure Code, requiring the defendant to refund the amount of Rs. 11,740 or else the plaintiff would be filing suit for recovery of that amount. It was after the service of that notice that the District Rent and Managing Officer; by his reply dated March 25, 1960 conveyed to the plaintiff for the first time by stating that his bid for the purchase of the plot had been accepted. Reply to that letter was despatched by the plaintiff to the District Rent and Managing Officer on April 3, 1960, asserting that in the face of the withdrawal of the offer communicated by the plaintiff to the defendant, subsequent intimation on behalf of the defendant about the acceptance was of no avail to the defendant.

(3) The plaintiff filed suit against the defendant on July 26, 1961, averring the above facts and claiming refund of Rs. 13,000 (Rs. 11,740 as principal and Rs. 1,260 as interest on that sum at 9% from February 18, 1960 to June 7, 1961. In its written statement, the defendant pleaded that civil Court had no jurisdiction to try the suit, that the plaintiff had no right to revoke this offer accompanied by deposit of the earnest money made at the time of auction after it had been accepted and that the intimation sent to the plaintiff about the acceptance of his bid was binding on him. It was further pleaded that the sum of Rs. 11,740 deposited by him stood forfeited to the defendant. Upon the above pleadings of the parties, the following issues were framed :—

- (1) Whether civil Court has jurisdiction to try this suit ?
- (2) Whether the bid of the plaintiff was to be accepted within 7 days. If so, to what effect ?
- (3) Whether the acceptance made by the defendant is within reasonable time, if issue No. 2 is not proved ?
- (4) Whether the offer at auction sale of the plaintiff was irrevocable for all times ?
- (5) Whether the plaintiff has any right to withdraw the offer and revoke it for the grounds alleged in the plaint ?
- (6) Whether the plaintiff is entitled to refund of earnest money if issue No. 5 is proved ?

(7) Whether a valid notice has been served upon the defendant under Section 80, Civil Procedure Code ?

(8) Whether the terms of the auction announced at the time of auction sale included dismantling of the road leading to the Sessions House and the plot being measured including that area ?

(9) To what amount is the plaintiff entitled in this suit ?

(4) The only two points, which require consideration as a result of the arguments of the counsel for the parties are the following :—

(1) Whether the civil Court has jurisdiction to try the suit, and

(2) Whether the revocation of the bid communicated by the plaintiff is warranted.

(5) It is urged on behalf of the appellant that Section 35 of the Displaced Persons (Compensation and Rehabilitation) Act, No. XLIV of 1954, bars the jurisdiction of a civil Court to entertain a suit as filed in the present case. Section 36 runs as under :—

“Save as otherwise expressly provided in this Act, no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter, which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

(6) There is no provision in the body of Act No. XLIV of 1954 or the rules made thereunder showing that the District Rent and Managing Officer is empowered to withhold the amount of the earnest money paid by a bidder of an evacuee property, at a public auction if he fails to communicate acceptance of the offer of the bid made by the bidder, when in terms of the auction, the District Rent and Managing Officer was under contractual obligation to communicate the acceptance. He has no power or authority to withhold the amount, when he did not care to communicate the acceptance of the

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offer to the bidder in terms of the auction. On the other hand, the bidder had waited for seven days and further gave notice of 15 days to the defendant to communicate to the plaintiff the acceptance of his bid and also conveyed that if not done so, the offer would stand revoked. The case is not governed by any provision of the Act, but is governed by the conditions of the contract entered into between the plaintiff and the defendant as incorporated in the terms of auction. In the absence of any specific provision in the said Act laying down that jurisdiction of civil Court to entertain a suit for refund of such an amount is barred, the case will be governed by Section 9, Civil Procedure Code. That Section provides that Civil Courts have jurisdiction to try all suits of civil nature. There could be no gainsaying the fact that the claim of the plaintiff to the refund of the earnest money has arisen as a result of breach of terms of the auction, the blame for which breach lies squarely at the door of the rehabilitation authorities. Section 36 of Act No. XLIV of 1954 has nothing to do with the type of the case as the present one. No shelter could be sought on behalf of the defendant under the obviously inapplicable section 36 of Act No. XLIV of 1954 to oust the jurisdiction of the civil Court.

(7) In order to determine the second question raised, reference to the hand bill incorporating the terms of auction is necessary. According to the hand bill Exhibit P. 6 incorporating the terms of auction held, at which offer by way of bid was made by the plaintiff, it is provided that on payment of 1/10th of the amount of the bid, the offer of bid was not to be accepted there and then but was postponed to a date after the expiry of seven days from the date of auction. The plaintiff was thus entitled to withdraw that offer by way of bid, prior to the communication of acceptance of that offer on behalf of the defendant to the plaintiff. The plaintiff, by letter dated January 29, 1960, sent to the Assistant Regional Settlement Commissioner, Patiala, stated that if his bid was not accepted within 15 days of the receipt of that letter, the offer made by the plaintiff at the bid would stand cancelled. No reply was given on behalf of the defendant as to whether bid had or had not been accepted although it was obligatory, on the defendant to communicate the acceptance of that offer soon after the expiry of seven days reckoned from the date of the auction. By letter dated February 18, 1960, the plaintiff specifically intimated to the District Rent and Managing Officer that no acceptance having been communicated to him, the offer stood revoked. In that letter, he claimed refund of the sum of Rs. 11,740

deposited by him. There was no response on behalf of the defendant even to that letter. Similarly, his registered letter dated March 9, 1960, in which the revocation of the offer made by making of bid had been reiterated did not bring forth any reply on behalf of the defendant. It was only upon formal notice being despatched by the plaintiff on March 23, 1960, under section 80, Civil Procedure Code, that there followed reply from the District Rent and Managing Officer to the effect that the offer to the plaintiff had been accepted. It is very difficult to appreciate that stand, when there has been no intimation on behalf of the defendant to the plaintiff earlier than the reply to the notice sent to him conveying to him that his offer had been accepted. The plaintiff on the other hand has proved on the record the above three letters showing that he not only complained to the authorities concerned about the non-communication of acceptance of his offer but also intimated to them that the offer of bid would stand revoked after 15 days' time from the date of the receipt of that letter to further enable the authorities to communicate acceptance of his offer to him. All went unresponded under these circumstances, there could be no doubt that the defendant having failed to communicate the acceptance according to the terms of the auction, on the basis of which the plaintiff gave his bid, the plaintiff was legitimately entitled to revoke the offer as he did and to claim refund of the money paid by him at the time the auction was held.

(8) The offer having been validly withdrawn and revoked by the plaintiff, the defendant is liable to refund the amount of the earnest money deposited by him. The plaintiff having been deprived of the sum of Rs. 11,740 from the date of withdrawal of his offer on February 18, 1960 up to June 7, 1961, is entitled to interest on that amount in addition to the amount paid by him on the date of the auction. The interest as determined by the trial Court at 6% per annum comes to Rs. 918. The trial Court has rightly decreed the suit of the plaintiff for the amount of Rs. 12,658 by aggregating earnest money and the interest due thereon.

(9) For the foregoing reasons, there is no force in this appeal and is disallowed. No one has appeared to represent the respondent. There will be no order as to costs.

B. S. G.