

*Before M.M. Kumar and Ajay Kumar Mittal, JJ.*

HARMINDER SINGH AND ANOTHER,—*Petitioners*

*versus*

PUNJAB AND SIND BANK AND OTHERS,—*Respondents*

*CWP No. 16130 of 2007*

15th October, 2007

***Constitution of India, 1950—Art. 226—Bank taking possession of secured/mortgaged property—Auction—Petitioners highest bidder—25% bid amount deposited—Bank directing petitioners to pay balance amount of 75%—Secured creditor declining to confirm sale—Bank cancelling auction and returning drafts to petitioners—Whether intimating petitioners that sale was to be confirmed after payment of balance amount within 15 days from date of auction can be considered as confirmation of sale—Held, no—Acceptance of a bid does not lead to a concluded contract in absence of confirmation—Inadequacy of price also constitutes a valid ground for cancellation of auction—Petition dismissed.***

*Held*, that the Authorized Officer,—*vide* letter dated 7th March, 2007 has intimated to the petitioners that they were required to pay the balance amount of 75% within 15 days from the date of auction and the sale was to be confirmed thereafter. This communication cannot be considered as confirmation of sale merely because the balance amount was paid on 14th March, 2007. It is well settled that a conditional acceptance of bid does not lead to a concluded contract in the absence of confirmation.

(Paras 8 & 9)

Arun Palli, Senior Advocate with Tushar Sharma, Advocate and Sanjiv Gupta, Advocate, *for the petitioners.*

**M.M. KUMAR, J.**

(1) This writ petition under Articles 226/227 of the Constitution prays for quashing of order dated 14th March, 2007 (P-11) rejecting the auction of the property styled as S.C.O. No. 183, Sector 37-C, Chandigarh which was conducted on 7th March, 2007. The petitioners who were the highest bidders in the auction were required to deposit 25% of the bid

amount which they deposited amounting to Rs. 43,75,000. The rest of the amount was required to be deposited within 15 days of the confirmation of the auction.

(2) Facts in brief are that on 30th November, 2006, the respondent-bank by invoking Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (for brevity, 'SARFRASI Act') took possession of the secured/mortgaged property in dispute after following due procedure. The total demand raised by the respondent-bank from its borrower is Rs. 4,42,37,665/- plus interest and cost. In order to sell the property to satisfy the demand, the respondent-bank issued public notices through newspapers on 3rd January, 2007 and 1st February, 2007. The reserve price of Rs. 1,70,00,000 was fixed and 7th March, 2007 was the date of auction.

(3) The petitioners are stated to be tenants in the building alongwith some other tenants. They were the highest bidder for Rs. 1.75 core in the auction held on 7th March, 2007. After deposit of 25% of the bid amounting to Rs. 43,75,000 (Rs. 8,50,00 + Rs. 35,25,000) the petitioners were asked by the respondent-bank in terms of Rule 9 of the Security interest (Enforcement) Rules, 2002, to pay the balance amount of 75% within 15 days so that the sale may be got confirmed in their favour and possession be delivered to them (P-8). However, on 14th March, 2007 the respondent-bank cancelled the auction by addressing a letter (P-11) to the petitioners, which reads as under :—

“The secured creditor has observed that there were certain irregularities in conducting the auction of the aforesaid property. The property could also not fetch the expected price prevalent in the market. The secured creditor has also received certain objections from third party regarding the auction of the property. Thus, keeping in view of all facts and circumstances, the secured creditor has declined to confirm this sale in terms of Rule 9 of the Security interest (Enforcement) Rules, 2002.

In view of above 25% of the Sale amount tendered by you is being refunded to you by Banker Cheque No. 660625 dated 14th March, 2007 for Rs. 43,75,000 (Rs. Forty three lacs seventy five thousand only). Thus the auction of the above property conducted on 7th March, 2007 stand cancelled.”

(4) On 14th March, 2007, itself the petitioners deposited a sum of Rs. 1,31,25,000, *vide* pay order/bank drafts with the respondent-bank. The bank also returned their bank drafts on 15th March, 2007 (P-12).

(5) The petitioners then sent legal notice/letter on 16th March, 2007 (P-13 & P-14). Even letter dated 20th March, 2007 was sent to the Police against the Authorised Officer (P-15). The respondent-bank on 21st march, 2007 sent a reply to the legal notice by stating that auction had started at 11.00 a.m. and was concluded within 45 minutes at 11.45 a.m. The secured creditor was satisfied that auction was conducted hastily and a large number of bidders, who could participate in the auction, were deprived of the opportunity. It was claimed that by cancelling the auction sale the respondent-bank was adhering to norms and well settled principles of law because no legal or vested right has accrued in favour of the petitioners. The balance 75% of the auction price was received after passing of order of cancellation which was also returned to the petitioners. The Authorised Officer in his reply to the Police has submitted that there were merely three bidders who participated in the auction. According to a complaint sent by Shri R.K. Arora through the General Manager of the respondent-bank, the market price of the property in dispute with tenants was Rs. 2.26 crores and that auction should have continued for at least four hours.

(5) The petitioners thereafter filed a civil suit in which the respondent-bank filed an application under Order VII Rule 10 read with Section 9 of the Code of Civil Procedure, 1908, with a prayer for returning the plaint of the petitioners for want of jurisdiction. The Civil Judge (Junior Division) Chandigarh,—*vide* his order dated 7th June, 2007, allowed the application and the plaint in original was returned to the petitioners directing them to appear before the Debts Recovery Tribunal (DRT) on or before 3rd July, 2007. The petitioners who had already approached DRT preferred to file an appeal before the learned Additional District Judge, Chandigarh, who dismissed the same on 14th September, 2007 (P-21) with cost. The auction of disputed property was already fixed for 26th June, 2007 when the appeal was presented and the application seeking stay of auction was rejected on 18th June, 2007. Even that order was unsuccessfully challenged before this Court in Civil Revision No. 3213 of 2007, which was disposed of on 7th August, 2007 (P-20). They have not challenged the order of the

learned Additional District Judge (P-21) before this Court disputing that Civil Courts are wrong in opining for lack of jurisdiction. They have preferred this writ petition.

(6) Mr. Arun Palli, learned counsel for the petitioner has argued that a concluded contract has come in being which could not be cancelled by the respondent-bank by its letter dated 14th March, 2007 (P-11). In that regard he has relied upon two communications dated 7th March, 2007 (P-8) and 14th March, 2007 (P-10) exchanged between respondent No. 1 and the petitioners and argued that on 7th March, 2007, auction was confirmed when respondent No. 1 had asked the petitioners to deposit the balance 75% of the amount i.e. Rs. 1,31,25,000. Accordingly, the amount was deposited by bank drafts on 14th March, 2007. He has further submitted that a contract can also be inferred from the exchange of letters and its formal manifestation in the form of a document is not legally required. On a pointed query raised by us, learned counsel has stated that the petitioners have abandoned the remedy of filing suit and have not chosen to challenge the order passed by the learned Additional District Judge on 14th September, 2007 (P-21).

(7) We have thoughtfully considered, the submissions made by learned counsel and are of the view that the instant petition is devoid of merit. The question for consideration is as to whether a concluded contract between the parties has come into existence. It would be apposite to firstly make a reference to the relevant terms of the sale notice, which are as under :—

“1. The aforesaid property shall not be sold below the reserve price mentioned above. Intended bidders are required to deposit the earnest deposit @ 5% of reserve price by way of pay order/ demand draft payable at Chandigarh and favouring Authorised Officer Punjab and Sind Bank drawn on any Nationalised or Scheduled bank. The earnest money deposit shall not carry any interest. EMD of the two highest bidder shall be retained and for others it shall be refunded on the date of Sale.

2. X X X X

3. The successful bidder shall deposit 25% of the amount of Sale price adjusting the EMD paid already within 48 hours of acceptance of bid price by the Authorised Officer in respect of the Sale by way of pay order/demand draft favouring Authorised Officer Punjab and Sind Bank drawn on any Nationalised or Scheduled bank immediately after the fall of hammer failing which earnest money deposit shall be forfeited and property will be offered to the next highest bidder.
4. The purchaser shall deposit the balance 75% of the Sale price on or before 15 days of confirmation of Sale by Authorised Officer or such extended period as agreed upon in writing by and solely at the discretion of Authorised Officer. In case of failure to deposit this balance amount within the prescribed period the amount deposited shall be forfeited.
5. All properties are being sold subject to conditions prescribed in the Second Schedule to the Income-tax Act, 1961 and Rule made thereunder. The highest bid will be approved by Authorised Officer.
6. X        X        X        X
7. X        X        X        X
8. The Authorised Officer is not bound to accept the highest offer or any or all offers and reserves the right to accept or reject any or all offers without assigning any reasons thereof' (emphasis added)

(8) According to condition No. 4, the petitioners were required to deposit the balance 75% of the sale price on or before 15 days of confirmation of sale by the Authorised Officer or such extended period as agreed upon in writing by exercise of discretion of the Authorised Officer. It is further pertinent to notice that the Authorised Officer,—*vide* letter dated 7th March, 2007 (P-8) has intimated to the petitioners that they were required to pay the balance amount of 75% within 15 days from the date of auction and the sale was to be confirmed thereafter. This letter makes interesting reading, which, thus, reads :—

“.....In the terms and conditions No. 3 of the General terms of conditions of the said Auction notice, you have already paid Rs. 43,75,000 (Rs. Forty three Lacs, Seventy Five thousand

only) being the 25% of the bid amount including EMT of Rs. 8.50 lacs. Your bid being the highest for Rs. 1,75,00,000 (One Crore Seventy Five Lacs only) has been considered and accepted. Accordingly, you are to pay the balance amount of 75% i.e. 1,31,25,000 (Rs. One crore Thirty one lacs Twenty five thousand only) within 15 days from the date of the auction, so that the Sale may be got confirmed in your favour and the possession of the property be handed over to you as per the provisions of the SARFRASI Act, 2002." (emphasis added).

(9) The aforementioned communication cannot be considered as confirmation of sale merely because the balance amount of Rs. 1,31,25,000 was paid on 14th March, 2007. It is well settled that a conditional acceptance of bid does not lead to a concluded contract in the absence of confirmation. In that regard reliance may be placed on para 8 of the judgment rendered by Hon'ble the Supreme Court in the case of **Haridwar Singh versus Bagun Sumbrui (1)**.

(10) Moreover, the Authorised Officer in his letter dated 21st March, 2007 sent to the petitioners, intimated them that the secured creditor has declined to confirm the sale because the auction conducted was not as required under the law. The auction proceedings had started at 11.00 a.m. and concluded hastily within 45 minutes by 11.45 a.m. depriving a number of bidders the opportunity to bid for the property in dispute. The communication also pointed out that no legal or vested right has accrued in favour of the petitioners. In reply to the legal notice, dated 21st March, 2007 (P-17), sent by respondent No. 1, further reasons have been highlighted, namely, the balance 75% of the sale amount was received after cancellation of the sale, which explain the reason as to why there is no reference made in the order dated 14th March, 2007 cancelling the auction. The auction had taken place on 7th March, 2007 and it was cancelled on 14th March, 2007, which fact shows that before the expiry of 15 days the auction was cancelled and the same was never confirmed. It is also evident from letter dated 23rd March, 2007, sent by the Authorised Officer to the police officer that only three bidders participated in the auction and as against the reserve price of Rs. 1,70,00,000, highest bid of Rs. 1,75,00,000 was given by the petitioners. It was also pointed out that a complaint was

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(1) AIR 1972 S.C. 1242

received from one Shri R.K. Arora stating that the market price for the occupied property like Shop-cum-Office in Sector 37-C, Chandigarh, was Rs. 2.25 crores. A copy of the complaint was also sent to the police officer. It is well settled that inadequacy of the price can constitute a valid ground for cancellation of the auction, as has been held by Hon'ble the Supreme Court in the case of **Anil Kumar Srivastava versus State of U.P., (2)**, in para 13 of the judgment, their Lordships' have observed as under :—

“13. Valuation is a question of fact. This Court is reluctant to interfere where valuation is based on relevant material. (See *Duncans Industries Ltd. versus State of U.P.*, (2000) 1 SCC 633). The difference between valuation and upset price has been explained in the case of *B. Susila and another versus Saraswathi Ammal*, AIR 1970 Madras 357 in which it has been held that fixation of an upset price may be an indication of the probable price which the land may fetch from the point of view of intending bidders. However, notwithstanding the fixation of upset price and notwithstanding the fact that a bidder has offered an amount higher than the reserve/upset price, the sale is still open to challenge on the ground that the property has not fetched the proper price and that the sale be set aside That the fixation of the reserve price does not affect the rights of the parties. Similarly, in the case of *A.U. Natarajan (Dr.) versus Indian Bank*, AIR 1981 Madras 151 it has been held that the expressions “value of a property” and “upset price” are not synonymous but have different meanings. That the term “upset price” means lowest selling price or reserve price. That unfortunately in many cases the word “value” has been used with reference to upset price. That the sale has to commence at the higher price and in the absence of bidders, the price will have to be progressively brought down till it reaches the upset price. That the upset price is fixed to facilitate the conduct of the sale. The fixation of upset price does not preclude the claimant from adducing proof that the land is sold for a low price.” (Emphasis added)

(11) For the reasons aforementioned, this petition fails and the same is dismissed.

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**R.N.R.**