

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 11.11.2011*

+ **CM (M) No. 1093/2011 & CM Nos.17530-31/2011**

RAM KARAN GUPTA Petitioner
Through Mr. Maninder Singh and
Mr. Sanjeev Sachdev, Sr.
Advocates with Mr. Praveen
Chauhan, Mr. Amol Sinha, Ms.
Anshum Jain & Mr. Nitin
Kaushik, Advocates.

versus

DAYANAND GUPTA & ORS ... Respondent
Through Mr. Rajeev Mehra, Sr.
Advocate with Mr S.A. Khan,
Advocate.

And

E.F.A No. 15/2011, Cav. No. 496/2011 & CM Nos.10602-03/2011

RAM KARAN GUPTA appellant
Through Mr. Maninder Singh and
Mr. Sanjeev Sachdev, Sr.
Advocates with Mr. Praveen
Chauhan, Mr. Amol Sinha,
Ms. Anshum Jain & Mr. Nitin
Kaushik, Advocates.

versus

DAYANAND GUPTA & ORS ... Respondent
Through Mr. Rajeev Mehra, Sr.
Advocate with Mr S.A. Khan,
Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. These are two petitions which have been filed by the petitioner Ram Karan Gupta.

(i) The first is Execution First Appeal No. 15/2011. This appeal has been directed against the impugned order dated 24.03.2011 vide which the Executing Court had disposed of the application filed by the auction purchaser under Order 21 Rules 94 & 95 of the Code of Civil Procedure (hereinafter referred to as the 'Code') as also the objections filed by the objector/ judgment debtor namely Ram Karan Gupta and had directed that since the auction of the suit property dated 08.10.2010 has been confirmed, a sale certificate be directed to be issued in the name of the auction purchaser and necessary documents for the mutation of the said property had been given. Execution petition had been disposed of accordingly.

(ii) The second petition is CM No. 1093/2011 which has assailed the order dated 09.08.2011 passed by the Executing Court whereby the application filed by the auction purchaser under Order 21 Rule 95 of the Code for delivery of the suit property in his favour for which an earlier order had been passed by the Executing Court on 24.03.2011 (impugned order in the Execution First Appeal) had also been disposed of directing all the judgment debtors/decreed holder to comply with the formalities regarding execution of the relevant document in favour of the auction purchase and to handover the vacant physical possession to him within two months from the date of the order i.e. within two months from 09.08.2011.

These two petitions are the subject matter of the present proceedings.

2. On behalf of the petitioner vehement arguments have been addressed challenging the auction whereby the Court auctioneer had accepted 25% of the bid amount; his contention is that there is a mandate under Order 21 Rules 84 & 85 of the Code whereby 25% of the bid amount has to be deposited immediately i.e. on the fall of the hammer; attention has been drawn to the pleadings

before the Executing Court; contention being that the Auction
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Purchaser in his reply in para 24 (page 107 of the paper book of Execution First Appeal) has clearly admitted that 25% the bid amount i.e. a sum of Rs.2.40 crores had been deposited on 11.10.2010; contention being that the mandate under Order 21 Rules 84 & 85 of the Code has not been complied with and since the bid amount had not been deposited on 08.10.2010, the entire sale transaction is void and is liable to be set aside. To support his submission, learned counsel for the petitioner has placed reliance upon the judgment of the Apex Court reported in AIR 1954 SC 349 Manilal Mahonlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahmud & another as also another judgment of the Apex Court reported in AIR 1996 SC 2781 Balram Vs. Ilam Singh & Others; submission being reiterated that the mandate of Order 21 Rule 84 of the Code specifically postulates that 25% of the purchase money in an auction bid has to be paid immediately on the person being declared as a purchaser and the balance 75% has to be paid within 15 days of the sale; both the provisions are independent and mandatory and upon non-compliance of these provisions, there is no sale at all. Attention has also been drawn to the reply filed by the Court auctioneer in the pending execution proceedings wherein the Court auctioneer has stated that 25% of the bid amount comprising of Rs.2.40 crores had been paid by the

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auction purchaser on the same day i.e. 08.10.2012; submission being that this version of the court auctioneer is clearly in conflict with the version of the auction purchaser who has admitted that this amount has been deposited on 11.10.2010; mandate of Order 21 Rules 84 & 85 of the Code not having been complied with, sale is void. Further objection of the petitioner that since he is a member of the family, he be permitted to get the sale deed executed in his favour; contention being that in family matters, the member of the family should be given a preemptive right and by accepting this proposal of the petitioner, no prejudice will be suffered as the full auction amount which was in the sum of Rs.9.60 crores is ready to be paid by the petitioner; his contention is that in fact an application to the said effect had also been filed by him before the Executing Court but this request has not been acceded to by the impugned order.

3. Arguments have been countered. It is pointed out that 25% of the sale figure comprising of Rs.2.40 crores had been paid by the auction purchaser on 08.10.2010 itself and the record speaks for itself.

4. Record has been perused. Submission of learned counsel for the respondent has force. Record shows that the property which is

the subject matter of the present dispute is property bearing No. CM (M) No. 1093/2011 & E.F.A No.15/2011

I-87, Ashok Vihar, Phase-I, New Delhi; Ms. Shubra Mendiratta had been appointed as the Court auctioneer and a public notice had been issued advertising the sale of this property in terms of Order 21 Rule 67 (2) of the Code; this public notice clearly states that the Court auctioneer namely Shubhra Mendiratta will announce terms and conditions on the spot; entry fee of Rs.10 lacs had to be been deposited by each participant by way of a demand draft in the name of the Court auctioneer; this public notice is dated 04.09.2010. The auction was admittedly held on 08.10.2010. Contention of the petitioner that the entry fee of Rs.10 lacs has not been paid by the petitioner is also ill-founded; vehement contention of the petitioner is that in the report of the Court auctioneer dated 08.10.2010, there is no mention that the entry fee of Rs.10 lacs has been deposited by the auction purchaser namely M/s J.S. Exims Pvt. Ltd.

5. Before disposing of the execution petition on 24.03.2011 and the rival contentions of the respective parties, the Executing Court had recorded the statement of the Court auctioneer which is dated 21.03.2011, the Court auctioneer Ms. Shubhra Mendiratta has on oath clearly stated that she has received the sum of Rs.10 lacs vide DD No.36515 & 36516 dated 08.10.2010 as

an entry fee from the auction purchaser; merely because this did

not find mention in the report of the court auctioneer is no ground to hold that this amount had in fact not been deposited; perusal of the report of the Court auctioneer which is dated 8.10.2010 shows that there were 24 persons who had participated in this auction and their names find mention in this report; in terms of the conditions of the auction, a person was entitled to bid only if he had paid the entry fee of Rs.10 lacs; the Court auctioneer on oath has also deposed that this amount of Rs.10 lacs has been received as entry fee vide the aforementioned DD from the auction purchaser; this argument of learned counsel for the petitioner is thus completely forceless. It is also not in dispute that the earnest money of Rs.2.40 crores (25% of the bid amount of Rs.9.60 crores) has been paid by 27 demand drafts details of which find mention in the Challan which had been submitted in the Treasury of the State Bank of India; these drafts find mention at the back page of the Challan; these demand drafts are undisputedly dated 08.10.2010. At this stage, it would also be relevant to note that 08.10.2010 was a Friday and 09.10.2010 being a second Saturday; 10.10.2010 being a Sunday; the Court auctioneer had thereafter at the earliest on 11.10.2010 moved an application before the concerned Court seeking permission of the Court to deposit 25% of the aforementioned bid amount of Rs.2.40 crores which application

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is on record. Permission had accordingly been granted on the same day. The submission of learned counsel for the petitioner that this challan shows that the amount had in fact been deposited on 15.10.2010 is an argument worthy of no merit as the demand drafts are admittedly dated 08.10.2010; the report of the court auctioneer which is dated 08.10.2010 clearly mentions that these demand drafts of Rs.2.40 crores has been deposited by the auction purchaser with the Court auctioneer on 8.10.2010; it was obviously for the reason noted supra i.e. 09th and 10th October, 2010 being Court holidays that the Court auctioneer could move the Court seeking permission of the Court to deposit the aforementioned amount only as early as on 11.10.2010 which permission was granted and the amount was deposited thereafter.

6. The mandate of Order 21 Rules 84 & 85 of the Code is to ensure that 25% of the bid amount is paid on the date of the auction itself which in clear terms had been done by auction purchaser; he had paid Rs. 2.40 crores on 8.10.2010 itself to the court auctioneer and this also find mention in her report dated 08.10.2010. This has also been reiterated by the court auctioneer in her statement on oath before the Executing Court dated 21.03.2011. Details of the drafts have been mentioned in the said

statement and merely because the details of the said drafts did

not find mention in the report dated 08.10.2010 is again no argument of the petitioner to hold that these amounts were in fact not been paid by the auction purchaser on the said date. It is also not the case of the petitioner before this Court that these drafts have been anti-dated i.e. that have been prepared subsequently but given on an earlier date.

7. The submission of the petitioner that the auction purchaser in his reply in the proceeding before the Executing Court in para 24 (page 107 of the Execution First Appeal) had stated that the payment of Rs.2.40 crores has been deposited on 11.10.2010 also has to be read necessarily in conformity with the earlier part of his reply wherein in paras 11 & 12 he has clearly stated that 25% of the bid amount was paid immediately by the auction purchaser with the Court auctioneer; para 24 merely states that the amount was deposited on 11.10.2010 which is the date when the amount was deposited in the court treasury after taking the necessary permission from the court. Emphasis is on the word “pay” as appearing in Order 21 Rule 84 and there is a clear distinction between “pay” and “deposit”. Thus this does not in any manner amount to an admission by the auction purchaser that he had not paid Rs.2.40 crores to the Court auctioneer on 08.10.2010.

8. This 25% bid amount had in fact been paid immediately.

9. The word 'immediately' as occurring in Order 21 Rule 84 of the Code has in fact been expanded by the Apex Court in AIR 2007 SC 998 Rosali Vs. V.Talco Bank & Others where the Court has noted herein as under:-

"The term "immediately", therefore, must be construed having regard to the aforementioned principles. The term has two meanings. One, indicating the relation of cause and effect and the other, the absence of time between two events. In the former sense, it means proximately, without intervention of anything, as opposed to "mediately," In the latter sense, it means instantaneously.

31. The term "immediately," is, thus required to be construed as meaning with all reasonable speed, considering the circumstances of the case. (See Halsbury's Laws of England, 4th Edition, Vol. 23 para 1618 p.1178).

32. In a given situation, the term "immediately" may mean "within reasonable time. Where an act is to be done within reasonable time, it must be done immediately."

10. This was a case where the auction purchaser had been granted time to pay the amount on the next day as the Bank was closed on the previous day which in the circumstances of the case the Apex Court had noted to have fulfilled the specific requirement of law.

11. Dealing with the principle of the interpretation of a statute, the Apex Court had noted that a statute must be read reasonably; it must be construed having regard to its legislative intent; it has

to be meaningful; it must fulfill the object and purport of the legislative intent; it is also a well settled principle of law that the common sense construction rule should be taken recourse to in certain cases. With these observations in mind, the term immediately had been expounded by the Apex Court. In the instant case record clearly speaks for itself; 27 drafts of Rs.2.40 crores had been paid to the Court auctioneer on 08.10.2010 and this finds mention in the report of the Court auctioneer dated 08.10.2010; the Court auctioneer had moved an application seeking permission of the Court to deposit the aforementioned amount on 11.10.2010 only for the contingencies explained above i.e. 09th and 10th October, 2010 being holidays of the Court; the mandate of Order 21 Rule 84 of the Code is upon the auction purchaser to pay 25% of the bid amount immediately which in this case he had adhered to. 25% of the bid amount had been paid by the Auction Purchaser to the court auctioneer on 8.10.2010 i.e. on that day itself and at the cost of repetition, this finds mention in the statement of the Court auctioneer also which had been recorded on 21.03.2011 pursuant to which the impugned order was passed.

12. There is no dispute to the proposition that Order 21 Rules 84 & 85 of the Code are mandatory provisions; said provisions have been fully complied with. The objections of the objector are
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without any merit. The order of the trial Court confirming the sale and directing the parties to execute documents of title in favour of the auction purchaser thus suffers from no infirmity.

13. Both petitions are dismissed.

NOVEMBER 11, 2011
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INDERMEET KAUR,J