

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

+ CM(M) 1063/2012, Cav. 967/2012, CM 16708-09/2012

Date of Decision: 01.02.2013

SHIVRAJ KRISHAN GUPTA

..... Petitioner

Through: Mr.P.V. Kapur, Sr.Adv. with
Mr.A.Anand, Ms.S.Jain, Adv.

Versus

CHANDER KRISHAN GUPTA AND ORS Respondent

Through: Mr. N.K.Kantawala, Mr.Ritesh,
Adv. for R1.

Mr.Sandeep Sethi, Sr.Adv. with
Mr.Aashish Gupta, Mr.Aditya
Nayyar, Adv. for R8.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution is directed against the order dated 11th September 2012 of Additional District Judge (ADJ) passed in Suit No. 149/2008, whereby he had accepted the bid of Rs.156.00 crore of M/s. Bharti (RBM) Holdings Private Limited (Respondent No. 8), and declined to consider the offer of Rs.165.00 crore of the petitioner's, a co-sharer in the subject property.

2. The disputes between the parties have further undergone extensive litigation since from the passing of preliminary decree of partition as back as on 8th May 1980. Vide this decree, the property,

which continued to be in the possession of the petitioner, was directed to be divided amongst the co-sharers of the family. On the change of pecuniary jurisdiction of this Court, the case was transferred to the Court of ADJ. As property could not be divided by metes and bounds, the same was directed to be disposed by auction. The petitioner challenged this order vide CM(M) 1549/2007, and which came to be dismissed by this Court on 30th November 2007, observing that the petitioner could participate in the auction and submit his bid. This was challenged by him in SLP which was dismissed by the Supreme Court on 21st January 2008. The learned ADJ vide order dated 26th March 2008, fixed the revised reserve price of the property at Rs.140.00 crore. Vide the subsequent order of 14th August 2008, the ADJ fixed modalities of the auction sale of the property in the following manner:

- a. that bids should be in sealed cover and accompanied by a Demand Draft of 10% of the bid amount as earnest money.
- b. the highest bidder shall deposit the next 15%, so as to make it 25% within a period of 15 days, from the date of announcement of the highest bidder
- c. the balance bid amount i.e. 75%, would be deposited by the successful bidder within 45 days from the date of deposit of the 15% of the bid amount
- d. within 15 days of depositing the 15%, the auctioneer shall take possession of the property and hold the same with himself pending the receipt of the balance 75%

- e. if the parties decline to vacate the property, the commissioner was empowered to get it vacated and keep possession of the same as a receiver.

3. The petitioner challenged the aforesaid order dated 14th August 2008 vide CM No. 1170/2008, which came to be dismissed by this Court on 16th October, 2008 observing as under:

“Since the amount of reserve price involved in the case in the auction of the property is Rs. 140.00 Crores, no bidder would come forward unless he is assured of vacant possession of the property. He can be asked to pay 75% of the balance amount only after showing the vacant possession of the property. Since the investment to be done by the highest bidder would be a heavy investment, I consider that the modalities set out by the Court below are in consonance with the nature of the auction.”

4. The petitioner carried the matter in SLP(C) 29116/2008 to the Supreme Court, which came to be dismissed vide order dated 5th December 2008 recording the order of ADJ as that of the High Court as equitable and just and not suffering from any patent legal infirmity.

5. Being not contented, the petitioner filed an application for revision of the reserve price of Rs.140.00 crore contending that vide notification dated 15th November 2011, the Government of Delhi had revised circle rates of the properties. The same was dismissed by the

ADJ vide his order dated 24th February 2011. The review petition against this order was also dismissed by the ADJ vide his order of 27th February 2011, and the matter carried by the petitioner to this Court, against this order, vide CM(M) 492/2012 was also dismissed by this Court on 02.05.2012 observing thus:

“The reserve price which has been fixed of the suit property at Rs.1.40 crores is not the final price which the property will fetch; at the time of fixing this reserve price, the Court had also taken into account the prevailing circle rates; even presuming that property prices have escalated from March, 2008, reserve price is only the minimum price which has to be bid by the bidder in an action. It is not the final purchase price.”

6. The petitioner still carried the matter further in SLP (Civil) 18980/2012, which came to be dismissed by the Supreme Court with cost of Rs.5.00 lakh vide order dated 04.07.2012 observing thus:

“In our view, the application filed by the petitioner for revision of the reserve price was nothing but gross abuse of the process of the Court and the trial Court did not commit any error by refusing to entertain the same.

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.....the sole object of the petitioner is to perpetuate his continued possession of the suit property and thereby deprive the respondents of their legitimate share.”

7. Thereafter, the learned ADJ proceeded further and vide his order of 30th July 2012 directed the Court Commissioner/Auctioneer to advertise for the sale of the property in two newspapers in accordance with the modalities contained in the order dated 14th August 2008. Pursuant thereto, two bids in the sealed covers were received by the Court Commissioner/Auctioneer. One of the two bids being of M/s. Alchemist Hospitality Group Ltd. was found to be of Rs.140.04 crore and the other of M/s. Bharti (RBM) Holding Pvt. Ltd. of Rs. 156.00 crore. These bids were opened by the ADJ in the Court on 11.09.2012. The bid of M/s. Bharti (RBM) Holding Pvt. Ltd., being of Rs.156.00 crore and the highest, as against that of M/s. Alchemist Hospitality Group Ltd., of Rs. 140.04 crore, was accepted and confirmed by the ADJ on 11.09.2012. On this day, the petitioner, who was also present in the Court offered to purchase the property for a sum of Rs.165.00 crore and claimed to be entitled to purchase the same under his right of pre-emption in terms of Order 21 Rule 88 CPC. The submission was also made by the petitioner that he is ready to deposit 10 per cent of the offered amount on the same day. During this proceeding, M/s. Alchemist Hospitality Group Ltd. also offered to raise their bid amount from Rs.140.04 crore to Rs. 157.00 crore. The learned ADJ accepted the bid of M/s. Bharti (RBM) Holding Pvt. Ltd., being the highest and

in consonance of the modalities, and declined the offers of M/s. Alchemist Hospitality Group Ltd. as also that of the petitioner. He reasoned as under:

“Once the whole process has been completed as per the procedure laid down in the detailed order dated 14.08.08 and the stipulations made therein, which have been upheld by the Hon’ble High Court and Hon’ble Supreme Court and the advertisements inviting the bids were duly published in the two newspapers and sufficient time was given to the parties to participate in the said bidding process and thereafter the bid of M/s. Bharti (RBM) Holding Pvt. Ltd. was found to be highest bid, therefore, it does not lie now in the mouth of the another bidder, whose bid was found to be lower one than the highest bidder, that he is now ready to offer more amount than the said highest bidder. Same is against the principle of natural justice and equity.

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.... the stipulations with regard to bidding process as per order dated 14.08.2008 has been upheld right upto Hon’ble Apex Court. Further there was nothing in the law which stopped them

to participate in the said process by quoting the price which they are quoting now. In these circumstances, I am of the considered opinion that the Order 21 Rule 88 will have no application to the facts of the present case, more so when the co-sharer had almost a decade time at his disposal to resort to the provisions of Order 21 Rule 88, therefore the said plea seems to have been made to thwart the disposal of the present suit in which the preliminary decree for partition was passed on 08.05.1980.”

8. On the same day, 10% of the bid amount submitted along with the bid by M/s. Bharti (RBM) Holding Pvt. Ltd. was also directed by the ADJ to be kept in a nationalized bank.

9. The petitioner still did not rest and has challenged the impugned order dated 11.09.2012 of ADJ, whereby his offer of Rs.165.00 crore was declined and bid of M/s. Bharti (RBM) Holding Pvt. Ltd. of Rs.156.00 crore was accepted. The grounds which are sought to be urged in assailing the impugned order are that the petitioner being a co-sharer and in possession of the property, has statutory right of pre-emption over and against the third person namely M/s. Bharti (RBM) Holding Pvt. Ltd., as per the provisions contained in Order 21 Rule 88 CPC as also Section 6(3) of Partition Act.

10. The learned Senior Counsel appearing for the petitioner vehemently urged the petitioner to be entitled to the right of pre-

emption, as was ordered by the ADJ in another suit between the same parties being Suit No. 899/2008, titled as Hari Krishan Vs. Kusum Sanghi. It was submitted by the learned Senior Counsel that since the sale of the property was ordered to be made by inviting bids in sealed covers, the petitioner could exercise his right of pre-emption by bidding “at such sale”, i.e. on the day the bids were opened and he learnt of the bid that he had to match. He submitted that the bid of the petitioner being higher than that of M/s. Bharti (RBM) Holding Pvt. Ltd. by Rs.9.00 crore, this was his statutory right to have his bid accepted as per Section 6(3) of the Partition Act as also Order 21 Rule 88 CPC. Learned Senior Counsel for the petitioner drew my attention to the Statement of Objects and Reasons of the Partition Act, 1893 and also sought to rely upon the decision of Full Bench of the Allahabad High Court in **Govind Dayal Vs. Inayatullah, ILR 7 Allahabad 776** to contend that the right of pre-emption is not a right of ‘re-purchase’, but that of ‘substitution’ in place of the vendee.

11. With regard to the plea that in another suit between the same parties offer of a co-sharer was accepted by the ADJ, it may suffice to state that that was on peculiar facts where there was only one bid and the offer of co-sharer was not challenged by that bidder or other co-sharers. Thus, it would not be of any help to the petitioner.

12. Before proceeding further and to appreciate the contention of learned Senior Counsel for the petitioner, it may be relevant to reproduce Statement of Objects and Reasons of the Partition Act 1893

as also the relevant observations of Justice Mahmood in the decision of **Govind Dayal** (supra).

“Statement of Objects and Reasons of Bill No. 8 of 1892 (A Bill to amend the law of Partition)

.....But as the law now stands the Court must give a share to each of the parties and cannot direct a sale and division of the proceeds in any case whatever. Instances, however, occasionally occur where there are inseparable practical difficulties in the way of making an equal division, and in such cases the Court is either powerless to give effect to its decree, or is driven to all kinds of shifts and expedients in order to do so. Such difficulties are by no means of very rare occurrence, although in many cases where the parties are properly advised they generally agree to some mutual arrangement, and thus relieve the Court from embarrassment.

It is proposed in the present Bill to supply this defect in the law by giving the Court, under proper safeguards discretionary authority to direct a sale where a partition cannot reasonably be made and a sale would, in the opinion of the Court, be more beneficial for the parties. But having regard to the strong attachment of the people of this

country to their landed possessions, it is proposed to make consent of the parties interested at least to the extent of a moiety in the property a condition precedent to the exercise of the Court of this new power. In order at the same time to prevent any oppressive exercise of this privilege, it is proposed to give such of the shareholders as do not desire a sale the right to buy the others out at a valuation to be determined by the Court. The power ‘moreover’ which it is proposed to give to the Court will be a discretionary one to be exercised on a consideration of all the circumstances of the case. It should be added that where the Court is obliged to direct a sale, a right of pre-emption is given by the Bill to the parties similar to that conferred on share-holders by Sec. 310 of the Code of Civil Procedure, 1882.”(emphasis supplied)

13. In **Govind Dayal** (supra), Justice Mahmood observed thus:

“The right of pre-emption is not a right of ‘re-purchase’ either from the vendor or from the vendee, involving any new contract of sale; but it is simply a right of substitution, entitling the pre-emptor, by reason of a legal incident to which the

sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title.”

14. On the other hand, the contention of learned Senior Counsel for the auctioneer/purchaser M/s. Bharti (RBM) Holdings Pvt. Ltd. (Respondent No. 8) is that the petitioner having not participated in the bid that was conducted by the learned ADJ and the bid of this respondent being the highest, and accepted by the Court, the petitioner’s plea regarding pre-emption was highly misconceived and misplaced, being not within the ambit of either Order XXI Rule 88 CPC or Section 6(3) of the Partition Act, 1893. It was also his submission that the modalities of sale of the property as framed by the ADJ vide his order of 14.08.2008 had been upheld by the Supreme Court and thus attained finality, and the court having conducted the sale in pursuant thereto, by the acceptance of its bid by the Court a valuable right has accrued to M/s. Bharti (RBM) Holdings Pvt. Ltd., which has not only deposited the initial 10% of the bid amount, but the whole of it.

15. The submission of other respondents, who are the co-sharers, is that they are only interested in the early disposal of the dispute, which has been dragged for more than 30 years now after passing of the preliminary decree. It was submitted that irrespective of who gets the property, they are only interested to have their shares at the earliest and

are unable to suffer any longer the hardships. These submissions being very fair and just, are certainly impressive and of great concern.

16. From the background of litigation, as noted above, it is seen that the decree of partition, which was passed in the year 1980, has not reached its logical conclusion of execution and has been considerably delayed. It is noted above that the execution of decree of partition being not possible by metes and bounds, the property was proposed to be disposed by way of auction. The property being not capable of partition, the sale of the property and distribution of its proceeds to the share holders was found to be beneficial for the shareholders. It is the elementary principle of law that where either on account of the nature of the property or the number of co-shares or for some other special circumstance, the court cannot reasonably or conveniently divide the property with metes and bounds and give each co-sharers such part of the property as can be beneficial to him, and without detriment to the value of the property, it is required to sell the same or some of the shares by auction and distribute the proceeds amongst the co-sharers or compensate the party whose share is thus sold. This power lies with the Court under Section 2 of the Partition Act, and to which there can be no dispute. It is also settled law that so far as special circumstance is concerned, no hard and fast rule can possibly be laid down. Each particular circumstance must substantially be dealt with according to its own merit and the Court must exercise its own discretion in the matter. In exercising the discretion, the courts have no doubt unfettered wide powers. The power of sale for realizing proceeds is

inherent in the process of partition and is only exercised in aid of partition.

17. Section 3 of Partition Act provides a procedure when a co-sharer intends to buy the share of other co-sharers. Sub section (1) thereof, which is relevant, reads thus:

“If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.”

18. This section contemplates a request by a shareholder for the purchase of the shares of other co-sharers. So long the property is not sold any sharer can make an application for the purchase of the share of co-sharer who wants the same to be sold. Though, this section does not lay down any time limit for a sharer applying for leave to buy the share of the others, but reading this together with Section 2 of Partition Act it would mean to convey that such a request was necessarily to be made after the property was directed to be sold and before it was actually sold. Undisputedly, the petitioner did not opt to buy the share of the other co-sharers when the Court had proceeded to sell the entire

property by way of inviting bids. Not only this, the petitioner even did not express his willingness to opt to buy the shares of the co-sharers. If that had been done by the petitioner, the court would not have proceeded further to invite the bids of the entire property, but got the valuation assessed of the share of the co-sharers and offered to sell the same to him 'at the ascertained price' as envisaged under section 3(1) of the Act.

19. The petitioner sought to claim his right of pre-emption based on Order XXI Rule 88 of CPC before the Court of ADJ when the sealed bids were opened and the highest bid of M/s Bharti (RBM) Holdings Pvt. Ltd. was accepted, by offering the amount higher than that of it. The learned ADJ observed, and rightly so, that provisions of Order XXI Rule 88 CPC are not applicable since the petitioner did not give any bid in the manner as was envisaged in the process of bidding, one of the terms of which being deposit of 10% of the bid amount along with the bid. The contention of the learned Senior Counsel for the petitioner is that the petitioner could not have given his bid matching that of the highest bidder, before the bids were opened in the Court on 11th September and that by having given his offer of higher amount i.e. of Rs.165.00 crore, he had the statutory right of pre-emption under Order XXI Rule 88 CPC as also under Section 6(3) of the Partition Act.

20. To record that the contention of learned senior counsel is not only misplaced, but highly misconceived, it is relevant to reproduce the

provisions contained in Order 21 Rule 88 CPC as also section 6(3) of Partition Act, which are as under:

Order XXI Rule 88 of the Code of Civil Procedure, 1908:

“Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.”
(emphasis supplied)

Sec. 6(3) of the Partition Act, 1893 is as follows:

“If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum, at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.” (emphasis supplied)

21. The learned senior counsel relied upon the decision of **Govind Dayal** (supra) to assert the right of pre-emption of the plaintiff. It is noteworthy that the material essential of right of pre-emption which were laid down in **Govind Dayal** related to the classic pre-emption of Mohammedan Law, which was legislated in the Punjab Pre-emption Act. It was in the context of Punjab Pre-emption Act, which recognized the concept of classic pre-emption as statutory right that it

was held to be right of substitution of the co-sharer in place of the vendee.

22. The Supreme Court in the case of **Vijayalakshmi (Smt.) Vs. B. Himantharaja Chetty and Another, (1996) 9 SCC 376** also considered the observations of Justice Mahmood made in the above noted case of **Govind Dayal** and observed thus:

“The concept of substitution from that long and even before has been the foundation of the law of pre-emption and has been noticed, followed and employed, time and again, in a catena of decisions. The fact that this Court in *Atam Prakash Vs. State of Haryana* has struck down the right of pre-emption based on consanguinity as a relic of the feudal past, inconsistent with the constitutional scheme and modern ideas, has not altered the situation that the right of pre-emption, wherever founded, whether in customs, statute or contract, is still a right of being substituted in place of the vendee, in a bargain of sale of immovable property. We therefore, need not burden this judgment with other attributes of the concept as attempted by both Hon’ble Judges of the High Court. We would rather go to decide this appeal on the basis of the contractual term aforementioned.” (emphasis supplied)

23. The instant case does not relate to codified statutory law of pre-emption as is contained in Punjab Pre-emption Act or in some other parts of the country. Undisputedly, there is neither any Pre-emption Act in Delhi, nor the Punjab Pre-emption Act is extended to Delhi, like some other statutes. If that is so, the law of substitution as contained in the Punjab Pre-emption Act or the concept of classic pre-emption of mohammedan law, would not be applicable. It is also not the case of the petitioner that there is any such statutory law of pre-emption under which he was claiming such a right.

24. There can be no dispute that there is a difference between partition decree and ordinary decree. Order XXI Rule 88 CPC provides one of the modes of execution of an ordinary decree against the immovable property. Section 7 of the Partition Act itself recognizes distinction between sales under this Act and the sales in execution of decrees. Though, a distinct bidding by a shareholder is pre-requisite, both in Section 6(3) of the Partition Act as also under Order XXI Rule 88 CPC, but these provisions have different fields of applications.

25. The classic concept of pre-emption is not found within the provisions of Order XXI Rule 88 CPC or section 6(3) of Partition Act. Firstly, Order XXI provided a procedure for execution of decrees and orders. Order XXI Rule 88 CPC would come into operation when in the execution of a decree, a share in undivided immovable property was sought to be sold, that one of the co-sharers was entitled to bid for the purchase of such share. In the instant case there was neither any

decree against any of the co-sharers, nor share of any one of them was to be sold in execution of decree. Had it been so that there was a decree against any co-sharer and in execution thereof his share in undivided property was to be sold, that the petitioner being a co-sharer, was entitled to bid for such share, and in that case, his bid was to be the bid of such share(s). Even then the petitioner had to bid a sum matching that of the highest bidder. Taking from any point of view, the plea of pre-emption under this provision is highly mis-conceived.

26. I am fortified in this view from the decision of **Hira Vs. Unas Ali Khan, ILR 3 All. 827** which was based on the provisions of Section 310 of CPC, 1877. In this case a share of certain undivided immovable property was put up for sale in execution of a decree. The bid of the plaintiff was the highest. The defendant, who was a co-sharer and had not been bidding, offered a sum equal to that bid by the plaintiff. He had certainly a right of pre-emption. It was held by Straight J. thus:

“We think that the Judge was in error in holding that the defendant-respondent satisfied the requirement of s. 310 of the Civil Procedure Code. The words are clear that the co-sharer and the other persons must respectively “advance the same sum” at the bidding, and thus contemplates a distinct bid by the co-sharer in the ordinary manner of offering bids. This point has already been considered on more than one occasion by Bench of

this Court, and in thus deciding it in the present case it is sufficient to say that we recognize the authority of **Tej Singh Vs. Govind Singh, ILR 2 All. 850.**

27. The provision contained in Section 310 of CPC, 1877, which was then applicable when the decision of **Hira Vs. Unas Ali Khan** was rendered, is *pari materia* with Section 310 of CPC of 1882 which reads as under:

“when the property sold in execution of a decree is a share of undivided immovable property, and two or more persons, of whom one is co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.”

28. Thus, a co-sharer intending to buy the share of other co-sharers must make a distinct bid matching that of the other bidders. For the same reasons, the provisions contained in Order XXI Rule 88 CPC, though somewhat differently worded, but convey the same legislative intent as in section 310 CPC of 1877 as also in CPC of 1882.

29. Moving further, provisions contained in section 6(3) of Partition Act are also, in fact, *pari materia* with the provisions contained in CPC, as noted above, except that this is not in the execution of the decree against a shareholder. This section is applicable when in the partition suit it is found from the nature of the property that it is incapable of partition or that the partition is inconvenient, that the court

can order the property to be sold. This section is incorporated to ensure a proper sale for proper price thus, making it necessary for the fixation of a reserve price. The literal interpretation of this provision leads to the irresistible conclusion that it contemplates a distinct bidding by a shareholder, like other bidders, when his share in the property is also sought to be sold to realize the proceeds for distribution to all the co-sharers. The right of pre-emption that is envisaged in this provision is not that of substitution or that of the co-sharer stepping into the shoes of the vendee, but it mandates each and every co-sharer intending to buy the joint property to participate in the bidding. Even the Statement of Objects and Reasons of the Partition Act, which has been reproduced above, would fortify that the right of pre-emption as given in this provision to the parties is similar to that conferred on shareholders by section 310 CPC of 1882.

30. The above discussion leads to irresistible conclusion that the right of pre-emption as available to a co-sharer is not that of the classic concept and characteristics as envisaged in Punjab Pre-emption Act or as recognized by the Mohammedan Law, but is conditioned with the obligation on the co-sharer, intending to buy the property, to make a distinct bid in the bidding, matching the same sum as that of the highest bidder.

31. Somewhat similar controversy was before the Calcutta High Court **In Re: Weighbird (India) Limited (In Liquidation); In re: Titagarh Industries Limited and Titagarh Papers Ltd. Vs. Official Liquidator** wherein there was an agreement that the vendee or

successor in interest would have a right of pre-emption in respect of the subject land in the event of any of the four situations arising without express concurrence in right of the vendor company. The reliance was placed on the decisions of **Tej Singh** (supra) and **Hira** (supra) and it was held thus:

“The applicants will be afforded, at the auction of the subject land, an opportunity to match the highest bid, subject to such highest bid being above the valuer’s assessment of the property. In the event the bid by the applicants in the joint highest, the applicants will enjoy the benefit of being entitled to purchase the land at such price without requiring to outbid the other joint highest bidder. But the applicants’ rights, though recognized, cannot confer on them the benefit of obtaining the land on the valuation thereof by any valuer without the land coming under the hammer in the Court sale. The applicants will also enjoy the special privilege of being invited by the official liquidator to participate in the sale by auction whenever it is conducted by Court.”

32. From all above it can be said with certainty that the law laid down in the cases of **Tej Singh** (supra) and **Hira** (supra) still hold good.

33. In view of all above, and having discussed that the petitioner never chose under section 3 of the Partition Act as also did not participate in the bid conducted pursuant to modalities formulated in this regard, his offer of the amount higher than that of the highest bidder, would not make him entitled to dislodge the claim of the highest bidder, who had not only participated and given the highest bid, but had complied with all the terms and stipulation of the tender inviting bids, including deposit of 10% of the bid amount at the time of bid, followed by deposit of 15% in the given time and thereafter making deposit of the entire bid amount. Had the petitioner participated and given bid as per the terms and stipulations of the modalities, position would have been different. Since that has not been done by him, he cannot set the clock back and upset the entire process. In fact, that was what was ordered by this Court on 30.11.2007 that he should participate in the auction process and submit his bid. In the absence of a distinct bid, the offer of the petitioner of the amount higher than that of the highest bidder, after the opening of the bids does not come within the ambit of section 6(3) of Partition Act as also under Order XXI Rule 88 CPC. Likewise, the offer of enhanced bid by the second bidder M/s Alchemist Hospitality Group Ltd. at that stage was also of no consequence. If this phenomenon is allowed to be accepted, the sales conducted by the Courts would prove to be self defeating exercises. All will lose faith in the actual sales taking place and no one will care to travel up to the court room or the auction place, being uncertain that the sale would at all go through. Not only this, it would

encourage such unscrupulous co-sharers to make such processes laughing stocks, by coming at the end of the process and offering an amount higher than the highest bidder, only with some oblique motive to halt or at least delay the process.

34. The Conduct of the petitioner herein has been noted by the learned ADJ and by this Court as also the Supreme Court on various occasions, as noticed above. The petitioner, who is in possession of the property, has by unscrupulous means designed to delay the proceedings for number of years and been enjoying the property to the exclusion of other co-sharers. Even the heavy cost of Rs.5.00 lakh imposed by the Supreme Court did not deter him in pursuing the lost litigation. He is found to be exclusively responsible for delaying the execution of the decree of 1980 by having abused the process of law to the prejudice of the other co-sharers as also the bonafide purchaser for consideration. This court as also the Supreme Court have already found there to be no infirmity or illegality in the process of sale adopted by the learned ADJ and have reiterated and maintained the same. There is neither any illegality nor infirmity in the decision of learned ADJ, declining the offer of the petitioner, rendered vide the impugned order. As imposing of cost may not deter the petitioner, I refrain from imposing any. I would simply give the petitioner a cautionary advice to graciously accept and submit to the process of law and refrain from conceiving any other thought which may lead him to irretrievable embarrassments.

35. I do not see any reason to interfere with the impugned order of the ADJ. The petition having no merit is dismissed.

M.L. MEHTA, J.

FEBRUARY 01, 2013

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