

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CIVIL REVISION PETITION No. 2005 of 2015

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ORDER: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Challenge is to the order dated 15.04.2015 in I.A. No.2943 of 2014 in A.O.P. No.1039 of 2010 on the file of the II Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, 'court below'), whereby and whereunder, an Advocate-Commissioner was appointed to take possession of Sri Lakshmi Kala Mandhir, Lothukunta, Alwal, Ranga Reddy District and conduct auction of the said theatre among the partners and remit the amount into the Court and certain other directions were given.

2. Respondent No.2 in the said application is the revision petitioner herein. His challenge is on the following grounds:

- i. It is stated that respondent No.1 earlier was the auction bidder, had fell huge arrears payable not only to the respondents but third parties and had got the subject theatre defaulter and, therefore, the court below ought not to have permitted him to participate in the auction, as a defaulter is not entitled to participate in the auction.
- ii. It is stated that the court below has not properly comprehended the order in C.R.P. No.4021 of 1997

dated 02.07.1998, wherein the terms and conditions for conduct of the auction between the parties have been laid down, which terms and conditions were agreed among the parties for conduct of auction dated 20.09.1997 and consistently followed all these years.

- iii. It is stated that even the order in C.M.A. No.123 of 1993 dated 09.04.1994 and the order in C.R.P. No.4021 of 1997 dated 02.07.1998 including the terms and conditions laid down among the parties have been affirmed by this Court successively, which were overlooked by the court below.
- iv. It is stated that the court below somehow, overlooked the fact that even in the order dated 27.01.1998 in I.A. No.2778 of 2008 while appointing a fresh arbitrator it was specifically mentioned that the earlier orders followed in the above C.M.A. and C.R.P. were to be followed in all other respects had become final and, therefore, parties are bound by the same.

Contending that the order under challenge is contrary to the principles of natural justice, sought to set aside the same.

3. The fact-situation occurring herein is not in dispute. It relates to running a theatre called 'Sri Lakshmi Kala Mandhir' situated at Lothukunta, Alwal, Ranga Reddy District. The petitioner and respondent Nos.1 to 5 are admittedly the partners of 'Sri Lakshmi Enterprises' and mainly intended to manage the said theatre. Respondent No.6 herein was the arbitrator, who passed the award

which was in question in A.O.P. No.1039 of 2010.

4. Respondent No.1 herein preferred A.O.P. No.123 of 1993 on the file of this Court under Order 43 Rules 1 and 5 of the Code of Civil Procedure, 1908 (for short, 'CPC') challenging the order in I.A. No.1284 of 1992 in A.O.P. No.18 of 1991 dated 19.01.1993 on the file of the Principal Subordinate Judge, Ranga Reddy District against the revision petitioner and other respondent Nos.2 to 5. A Division Bench of this Court by the order dated 08.11.1994, which is referred to in the revision grounds, while adjudicating upon the controversy, made directions as contained in paragraph No.10 therein, which, of course, needs no reference. Later, again, when there were disputes, respondent No.1 herein preferred C.R.P. Nos.4021 and 4165 of 1997 challenging the order dated 29.09.1997 made in I.A. No.1582 of 1997 in O.P. No.80 of 1992, which also relates to the subject matter herein. Both the C.R.Ps. were disposed of by another Division Bench of this Court by a common order dated 08.07.1998 directing to follow the terms and conditions contained in tender notice, which was the outcome of consultation among the partners and consent among them besides directing to follow three more terms mentioned in the penultimate paragraph, which, of course, needs no narration in the present context.

5. Subsequently, when there were disputes, respondent No.2 herein filed I.A. No.2778 of 2008 in O.P. No.80 of 1992 on the file of the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, for appointment of a fresh arbitrator to take possession of the theatre and pass award and the said petition was allowed appointing a former Judge of this Court as an arbitrator and final award was passed by respondent No.6 herein on 27.08.2010 by mentioning the ascertained amounts against each of the partners' liability.

6. We have heard Sri V.Hari Haran, learned counsel for the revision petitioner, Sri K.Durga Prasad, learned counsel for respondent No.2, Sri P.Avani Siva Kumar, learned counsel for respondent No.3, and Sri Peter Israel, learned counsel for respondent No.5.

7. Having tendered their arguments, they arrived at a consensus and filed memos on behalf of the revision petitioner and respondent No.1, respectively, requesting to stipulate the terms incorporated in the tender notice for the ensuing auction to be conducted by the Advocate-Commissioner appointed pursuant to the order under challenge. We have gone through the terms mentioned in the memos filed on behalf of the respective parties. Having duly considered, we are of the opinion, it would be just and convenient to stipulate the following terms for adherence in the auction to be conducted by the Advocate-Commissioner appointed by the court below:

- i. The term of the lease would be for one year.
- ii. The parties/partners of the firm alone shall bid amongst themselves for running the theatre.
- iii. The persons who intended to participate in the auction will have free access to visit the theatre, inspect the furniture, equipment and such other allied matters, which a diligent auction purchaser wants to have.
- iv. The basis for offers for bid is the gross collection capacity as on today. If there is any increase in gross collection capacity, the highest bidder shall be liable for pro-rata increase of his liability to deposit towards rentals.

- v. The auction would be conducted by the Advocate Commissioner immediately and he should obtain the bids from the partners in writing.
- vi. The highest bidder shall be given the management of the theatre for a period of one year only.
- vii. The highest bidder shall deposit one month amount as security deposit with the court to the credit of AOP No.1039 of 2010 on the file of learned II Additional District Judge, Ranga Reddy District.
- viii. The successful bidder shall deposit the monthly rent on or before 5th of every successive month without fail.
- ix. The terms and conditions as agreed in the order in CMA No.123 of 1993 and the Tender terms agreed as recorded in CRP No.4021 of 1997 shall be binding on all parties agreed in the month of October, 1994 for running the said theatre.
- x. The highest bidder shall be liable to pay the entertainment tax and all other taxes and statutory liabilities and it shall be his responsibility to ensure all clearances from the concerned authority and licence shall be kept in force for the duration of auction period.
- xi. If there are any dues of the above taxes and charges for the period earlier to the auction period which

disable the lessee/licencee the running of the Theatre, they shall be paid out of the auction amount available.

- xii. The theatre building, equipment including machinery, furniture, etc., shall immediately be covered by insurance coverage from NIC. The insurance policy expenditure shall be met from the funds of the firm.
- xiii. The highest bidder is responsible for maintaining the theatre during his tenure, towards such items as security. It is the responsibility of the highest bidder to attend to the maintenance of the machinery or furniture, to the level of the same condition under which it was entrusted to him/her.
- xiv. The present Advocate Commissioner will once again conduct fresh auction one month prior to the date of expiry of the lease period.

8. The learned counsel for both sides requested to fix time for holding auction by the Advocate-Commissioner and also to fix time for disposal of the main A.O.P. Since both the requests are reasonable in our view, we direct the Advocate-Commissioner to hold auction within a month from today. The Court below is directed to dispose of A.O.P. No.1039 of 2010 within four (4) months from the date of receipt of a copy of the order.

9. With the directions as above, the instant Civil Revision Petition is disposed of. There shall be no order as to costs.

10. As a sequel thereto, miscellaneous petitions, if any pending in the instant civil revision petition, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 8th, 2015.

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Note : The Registry is directed to dispatch the order forthwith by marking a copy to the Court concerned.

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