IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.568 OF 2014
IN
NOTICE OF MOTION NO.2265 OF 2012
IN
SUIT NO.4549 OF 2010

ALONGWITH
CIVIL APPLICATION NO.689 OF 2014
IN
APPEAL FROM ORDER NO.568 OF 2014.

Pradip Himatlal Motla	]
age about 50 years,	] Appellant
occupation: business	] Original
residing at Flat No.175, 6th floor,	] Plaintiff.
Sahakar Niwas	]
20, Tardeo Road, Mumbai 400 034	]

V/s.

1. Jayesh Himatlal Motla	]
residing at: flat NO.103, 3rd floor,	]
Sahakar Niwas, 20 Tardeo Road	]
Mumbai 400 034	] Respondents
	] Original
2. Mahesh Himatlal Motla	] Defendants.
residing at flat No.82, 2nd floor	]
Sahakar Niwas, 20 Tardeo Road	]
Mumbai 400 034	]

Mr. M. U. Makhija, a/w Mr. P. J. Gada, I/by Dhanuka and Partners, for the Appellant.
Mr. Pritesh V. Bhagat, for the Respondent Nos. 1 & 2.

CORAM : <u>DR. SHALINI PHANSALKAR-JOSHI, J.</u>

CLOSED FOR ORDER ON : 23RD AUGUST, 2016.

PRONOUNCED ON : 29TH AUGUST, 2016.

JUDGMENT :

1. In this appeal, an exception is taken to the order dated 29th March, 2014, passed by the City Civil Court, Mumbai, in Notice of Motion No.2265 of 2012 in Suit No.4549 of 2010. By the impugned order, the trial Court was pleased to reject the Notice of Motion.

2. Brief facts of the appeal are to the effect that the appellant and respondent No.1 are real brothers interse. Respondent No.2 is the son of respondent No.1. The appellant and respondent No.1 were running a partnership business in the name and style M/s India Stats and Eastern Agencies from Jorawar Bhavan, 93, Queens Road, Mumbai 400 020. On account of the disputes interse between them, the appellant had filed a suit initially before this Court, seeking dissolution of the said partnership firm w.e.f. 26th April, 2010 and to pass decree for winding up of the business of partnership firm, with further direction to respondents to render true and faithful account of the partnership firm.

3. During the pendency of the suit, appellant had taken out Notice of Motion No.104 of 2011. In the said Notice of Motion, Court Receiver came to be appointed to take charge of the assets, books,

documents and papers of the firm. The said order was passed by this Court on 30.11.2010.

4. Accordingly, after the Court Receiver had taken charge and submitted his report, the appellant had moved Chamber Summons No.1162 of 2011, seeking relief that he may be appointed as an agent of the Court Receiver to run partnership business. In the said Chamber Summons, on 23.11.2011, an order was passed directing the Court Receiver to appoint an agent in respect of assets of the firm including suit premises of the partnership firm and the stock lying there. The Court Receiver was further directed to conduct bid only between the parties to the suit, appoint highest bidder as Agent of the Court Receiver on the usual terms and conditions.

5. In pursuance of this order, Court Receiver held three meetings dated 31st August, 2012, 1st September, 2012 and 14th September, 2012, in the presence of the parties as well as their respective advocates. As agreed in the meeting dated 31st August, 2012, in the meeting dated 1st September, 2012, bidding was conducted with the consent of the parties, in respect of stock of the partnership firm and in the said bidding appellant gave the highest offer of Rs.46 lacs and hence his bid was accepted so far as the material and stocks lying in the partnership firm premises. The appellant was directed to deposit a sum of Rs.5 lacs within a week and the remaining amount to be paid subsequently, on or

before 18th September, 2012.

6. Both parties were put to the notice that on 14th September, 2012, auction of the partnership premises will take place in the office of the Court Receiver and they should remain present. It was decided that after the auction of the premises, steps of removing material or stocks from the premises shall be taken.

7. The appellant, by taking Notice of Motion before the trial Court, challenged this mode of conducting the auction by holding two bidding processes, one for the stock of the partnership firm and the other for firm premises. It was contended by the appellant that as per the order passed by this Court on 23.11.2011, in Chamber Summons No.1162 of 2011, the Court Receiver, ought to have conducted auction for both stock and the premises at one and the same time. The Court Receiver has, however, misinterpreted the order of this Court and directed the parties to give separate biddings, one for the stock lying in the suit premises and second for the suit premises. It is submitted that this was totally against the order of this Court and hence the appellant has refused to accede to the result of the auction which was conducted on 1st September, 2012, which was only respect of the stock of the business.

8. According to learned counsel for appellant, appellant was not given sufficient opportunity to convince the Court Receiver about real meaning and interpretation of the order of this Court dated 23.11.2011.

Under the pressure, he participated in the bidding processes of the stock in the suit premises and therefore, this entire auction process, as conducted by the Receiver is required to be quashed and set aside.

9. Respondents herein had taken a strong objection to this Notice of Motion, contending inter alia that it is misconceived, not maintainable and liable to be dismissed. It was submitted that the Notice of Motion was taken out with malafide intention and ulterior motive to back out time from the payment of auction amount after having willingly participating in the auction of the stock of the business and being successful bidder for Rs.46 lacs. It was further contended that the appellant has also not deposited the amount of Rs.5 lacs, within a week, as agreed between the parties and as directed by the Court Receiver. Therefore, unless and until he deposits the said amount, he cannot be heard in the matter.

10. As regards the mode of auction, it was denied by the Respondents that the High Court, vide its order dated 26.11.2011, had directed for the auction of the both stock of the business and suit premises to be conducted at one and the same time. It was submitted that the Court Receiver has with full consent of the parties and their respective advocates, decided the mode of conducting auction. For all these three meetings, held before Court Receiver, the appellant was present alongwith his advocate. With his consent and consent of his advocate,

the process of conducting bidding and holding action was decided. For that purpose, both parties were allowed to take inspection of the stock and then to bid for the same. The appellant has taken inspection of the stock to his entire satisfaction and then participated in the auction and had made his bid. His bid being the highest, was accepted as final. Only thereafter with malafide intention, the appellant has raised this false grievance. just in order to avoid the payment of the auction sum.

11. It is denied by the respondents that at any time, appellant was pressurized or not given sufficient opportunity to understand the bidding process. It is submitted that as the entire auction process was conducted with full consent of the parties and their advocates, appellant cannot now be permitted to withdraw from the said process, especially when the appellant and his advocate were working in tandem with each other. Thus, it was submitted that the Notice of Motion was without any substance and hence liable to be dismissed.

12. The learned trial Court, after hearing the submissions advanced by learned counsel for both the parties, was pleased to accept the submission of the respondent that this entire process of auction was conducted with the consent of both parties and their counsels. Hence, the grievance raised at this stage after this auction of the stock is completed cannot be entertained. The trial Court has by its impugned order, dismissed the Notice of Motion.

13. This order of the trial Court is challenged in this appeal by learned counsel for appellant, by submitting that the Court Receiver was not at liberty or entitled to interpret the order passed by this Court directing him to appoint an Agent in respect of the assets of the firm including the premises described therein and the stock lying in it. It is urged that the Court Receiver has totally misrepresented the said order and proceeded to conduct two different auction processes, one for the stock and another for the suit premises. Thus, according to learned counsel for appellant, the entire process of auction is thereby vitiated. The learned trial Judge, has however, dismissed the Notice of Motion simpliciter on the grounds that the auction process was conducted with consent of both parties. It is urged by learned counsel for appellant that consent of the party cannot change the nature of the order passed by the Court, as the party to the litigation has also no right to change the mode of auction, which was prescribed by this Court. Thus, according to learned counsel for appellant, impugned order passed by the trial Court rejecting appellant's Notice of Motion cannot be upheld and needs to be quashed and set aside.

14. Per contra, learned counsel for respondents has supported the said order, by pointing out to the minutes of the three meetings which took place before the Court Receiver and submitted that through-out these three meetings, appellant was present alongwith his advocate.

Whatever steps for conducting auction were taken by the Court Receiver were with full consent of appellant and his counsel. In such situation, appellant cannot back out from the auction after participating therein and making the highest bid for the stock. It is urged that the appellant has also failed to deposit amount of auction bid as directed by the Court Receiver and has approached this Court seeking equitable relief which, he is not entitled to get.

15. Further, it is submitted by learned counsel for respondents that this Court, by its order dated 23.11.2011, has not prescribed any particular mode of conducting the auction. This Court has only directed the Court Receiver to appoint an Agent in respect of the Assets of the firm including the premises and the stock lying therein. It is nowhere stated in the order that Agent is to be appointed by one and the same auction process. in respect of both stock and the suit premises. Therefore, according to learned counsel for respondents, appellant cannot make any grievance on that score and contend that the Court Receiver has acted against the order of this Court. In his submission, therefore, the trial Court has rightly exercised its direction while rejecting the appellant's Notice of Motion, and this Court, should be slow in interfering with the exercise of the discretion by the trial Court.

16. Having heard learned counsel for the appellant and respondent at some length, this Court finds that the entire controversy in

the present litigation, revolves around the interpretation of the order passed by this Court on 23.11.2011. Hence for properly appreciating the said controversy, it would be essential to reproduce the said order. It reads thus:-

> “The Court Receiver, High Court, Bombay is appointed as a receiver in respect of all the assets of the firm. The Court Receiver shall appoint an agent in respect of the assets of the firm including the premises described in prayer (a) of the chamber summons and the stock lying therein. The Court Receiver shall conduct the bidding only between the parties to the suit and shall appoint the highest bidder as an agent on the usual terms and conditions”

17. **T**hus, a bare perusal of this order makes it clear that by the said order, Court Receiver was directed to appoint Agent in respect of both the assets of the firm including suit premises and the stock lying therein and an Agent was to be appointed by conducting bidding only between the parties to the suit and the highest bidder was to be appointed as agent on the usual terms and conditions.

18. Thus, as rightly submitted by the learned counsel for respondents the order passed by this Court nowhere lays down any particular mode of conducting auction or bidding, both for stock and suit premises at one and the same time or in one and the same auction process. It was left entirely to the discretion of the Court Receiver which

mode was to be adopted for conducting auction of suit premises and the stock therein. From the wording in the order, therefore, it becomes difficult to accept the contention of the appellant that the auction process was to be conducted, both for the suit premises and the stock lying therein, at once and the same time. Therefore, it cannot be said that Court Receiver has acted against the order of the Court or misinterpreted the order, when he has conducted separate bidding, initially for the stock lying in the suit premises on 1.9.2012 and thereafter he was to undertake bidding for the suit premises on 14.09.2012.

19. Moreover, report filed by the Court Receiver contains the minutes of all these three meetings held on 31.8.2012, 1.9.2012 and 14.9.2012 which make it clear that the appellant was present with his advocate for all these three meetings and whatever procedure was decided to be adopted by the Court Receiver, was with consent of both the parties and their advocates. If appellant had any grievance about separate auctions of the suit premises and the stock lying therein, he should not have consented for the same in the meeting dated 1.9.2012. Moreover, if the said mode of bidding for the suit premises and stock lying therein was not acceptable to the appellant or if according to him, it was against the order of this Court, then the appellant should not have participated in the bidding of the stock on 1st September, 2012. The report filed by the Receiver alongwith minutes of the meeting of the said date

goes to show that the appellant not only participated in the bidding, but he also raised the highest bid to the tune of Rs.46 lacs and the bid was awarded to him. Only in the next meeting on 14.9.2012, when appellant was to deposit the amount of Rs.5 lacs and the auction was to be conducted for the suit premises, appellant retracted and filed this suit.

20. In view of these facts, in my considered opinion, the trial Court has rightly held that the appellant has no prima facie case to challenge the auction process conducted by the Court Receiver. The Notice of Motion for stay to the auction process thus came to be rejected rightly by the trial Court. The appeal holds no merit, therefore stands dismissed.

21. In view of disposal of Appeal, Civil Application No.689 of 2014 stands disposed of accordingly.

22. In the circumstances of the case parties to bear their own costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.]