

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 5012 OF 2013
WITH
Civil Application NO. 2831 OF 2015
IN
Writ Petition NO. 5012 OF 2013

M/S. SINGHAL ENTERPRISES,
THROUGH PARTNER, MR. LAXMAN
MANGERAM SINGHAL

...Petitioner

Versus

MR. NANDLAL PYARELAL AGARWAL
AND ORS.

...Respondents

....

Mr. Sandeep Phatak a/w. Kalyani Tulankar i/b. Mr. S.B. Deshmukh,
Advocate for the petitioner.

Mr. R.S. Apte, Senior Advocate i/b. Mr. Arvind Purohit, for respondent
No.1.

Mr. S.P. Salvi, Advocate for respondent No.2.

Ms. Aditi Bhat i/b. Yatin Shah, Advocate for respondent No.3.

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WITH

Writ Petition (ST) NO. 16370 OF 2013

MR. NANDLAL PYARELAL AGARWAL,
THROUGH POWER OF ATTORNEY,
MR. SUBHAS PYARELAL AGARWAL

...Petitioner

Versus

M/S. SINGHAL ENTERPRISES,
THROUGH MR. LAXMAN MANGERAM
SINGHAL AND ORS

...Respondents

.....

Mr. R.S. Apte, Senior Advocate i/b. Mr. Arvind Purohit, for the petitioner.
Mr. Sandeep Phatak a/w. Kalyani Tulankar i/b. Mr. S.B. Deshmukh,
Advocate for respondent No.1.

Mr. S.P. Salvi, Advocate for respondent No.2.

Ms. Aditi Bhat i/b. Yatin R. Shah, Advocate for respondent No.3.

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CORAM : R. G. KETKAR, J.

RESERVED ON : 1st FEBRUARY, 2016

PRONOUNCED ON: 10th FEBRUARY, 2016

P.C.

1. Heard Mr. Sandip Phatak, learned Counsel for the petitioner in Writ Petition No.5012/2013 and for respondent No.1 in Writ Petition (st.) No.16370/2013, Mr. R.S. Apte, learned Senior Counsel for respondent No.1 in Writ Petition No.5012/2013 and for the petitioner in Writ Petition (st.) No.16370/2013, Mr. S. P. Salvi and Mr. Yatin R. Shah, learned Counsel for respondent No.2 and 3 respectively in both the Petitions, at length.

2. Rule. Learned Counsel for the respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

3. These petitions are directed against clause-(1) of operative part of the judgment and order dated 12.4.2013 passed by the learned 5th Joint Civil Judge, Senior Division at Pune below Exhibit-12 in Special Darkhast No.39/2000. Clause (1) of the operative part of the impugned order reads thus :

“ **ORDER**

1. Sale Certificate be issued to N.R. Agarwal, in capacity of partner of M/s. Singhal Enterprises. ”

4. Writ Petition No.5012/2013 is instituted by M/s. Singhal Enterprises through its Partner Mr. Laxman Mangeram Singhal. Writ Petition (st.) No.16370/2013 is instituted by N.P. Agarwal. The controversy between the parties is whether N.P. Agarwal has participated in the auction and purchased the property in dispute in his individual capacity or in his capacity as a Partner of M/s. Singhal Enterprises. M/s.Singhal Enterprises claims that it had participated in the auction through N.P. Agarwal and the sale certificate should be issued in favour of M/s.Singhal Enterprises. As against this, N.P. Agarwal contends that he participated in his individual capacity and, therefore, the sale certificate should be issued in his name and not in the capacity of Partner of M/s.Singhal Enterprises or in favour of M/s. Singhal Enterprises. The relevant and material facts, giving rise to filing of these Petitions, briefly stated are as under.

5. Special Civil Suit No.556/1996 was instituted by M/s. Trancoils Pvt. Ltd., hereinafter referred to as 'decree holder', against M/s. Patel Widecom [India] Ltd., hereinafter referred to as 'judgment

debtor' for recovery of Rs.9,68,000/-. On 7.1.1999 said suit was decreed. Decree holder thereafter filed Special Darkhast No.39/2000 for recovery of the decretal amount against the judgment debtor. In that Darkhast, industrial plot No.EL-36, Pimpri Industrial Area, Electronic Zone, MIDC, Bhosari, Pune (for short, 'suit property') was attached. It was thereafter put for auction. On 27.2.2001 auction of the suit property took place and there were four bidders who participated in the auction.

6. It is the case of M/s.Singhal Enterprises that it is a Partnership Firm consisting of Partners Laxman Singhal and N.P. Agarwal. On 27.2.2001 on behalf of M/s.Singhal Enterprises, N.P. Agarwal participated in the auction. The bid of M/s.Singhal Enterprises was highest i.e. Rs.12,55,000/-. It was accepted on 27.2.2001. On 28.2.2001, 25% of the bid amount, namely, Rs.3,13,750/- was paid by M/s.Singhal Enterprises. To that effect receipt dated 28.2.2001 at Exhibit-160 was issued in the name of M/s.Singhal Enterprises. On 14.3.2001 the remaining amount of Rs.9,41,250/- was deposited by M/s.Singhal Enterprises and to that effect receipt dated 14.3.2001 at Exhibit-161 was issued in the name of M/s.Singhal Enterprises.

7. N.P. Agarwal made an application dated 7.1.2002 at Exhibit-

56 under Order XXI Rule 94 of Code of Civil Procedure, 1908 (for short, 'CPC') for issuing sale certificate in his name. M/s.Singhal Enterprises made an application dated 23.1.2002 at Exhibit-67 under Order XXI Rule 94 of CPC for issuing sale certificate in favour of M/s.Singhal Enterprises.

8. M/s. Singhal Enterprises made application dated 18.2.2002 at Exhibit-79 inter alia praying for (i) calling upon N.P. Agarwal to establish his case by leading evidence; (ii) correcting/modifying the order dated 27.2.2001 in the name of M/s. Singhal Enterprises and recording the name of M/s. Singhal Enterprises as the highest bidder; and (iii) issuing sale certificate in the name of M/s. Singhal Enterprises by suitably modifying the order dated 27.2.2001. By order dated 1.3.2002, learned trial Judge permitted M/s.Singhal Enterprises to lead evidence as regards who has deposited the entire consideration amount. Learned trial Judge noted that there is a controversy as to who deposited the consideration amount. To ascertain the real fact, it is necessary for the parties to lead evidence. Learned trial Judge rejected application Exhibit-79 on the ground that the Court is not empowered to change the order passed on 27.2.2001.

9. In pursuance of the order dated 1.3.2002 below Exhibit-79,

the parties led evidence. By the impugned order, learned trial Judge has directed to issue sale certificate in favour of N.P. Agarwal, in the capacity of partner of M/s.Singhal Enterprises. It is against clause (1) of operative part of the impugned order, above Petitions are instituted.

10. Mr. Sandip Phatak appearing on behalf of M/s.Singhal Enterprises submitted that the receipt dated 28.2.2001 at Exhibit-160 was issued in the name of M/s.Singhal Enterprises. This receipt shows that 25% of the bid amount, namely, Rs.3,13,750/- was deposited by M/s.Singhal Enterprises. This receipt also bears stamp of M/s.Singhal Enterprises and bears signatures of N.P. Agarwal and L.M. Singhal being the partners of M/s.Singhal Enterprises.

11. On 14.3.2001 on behalf of M/s.Singhal Enterprises application at Exhibit-24 was made through Partners N.P. Agarwal and L.M. Singhal. It is signed by both the Partners. On the same day, learned trial Judge allowed the prayer seeking permission to deposit the purchase money in the Court and directed Nazir to accept the purchase money of Rs.9,41,250/-. Accordingly, the remaining amount of Rs.9,53,810/- was deposited by M/s.Singhal Enterprises on 14.3.2001 and to that effect receipt at Exhibit-161 was issued. Said receipt bears stamp of M/s.Singhal Enterprises and signatures of N.P. Agarwal and

L.M. Singhal being the Partners of M/s.Singhal Enterprises.

12. Mr. Phatak also relied upon the cash book of M/s. Singhal Enterprises for the period 19.2.2001 to 31.3.2001 which is at Exhibit-179. This cash book shows that M/s.Singhal Enterprises had advanced Rs.3,13,750/- and Rs.9,53,810/- for purchase of the suit property. He relied upon Sections 4 and 14 of the Indian Partnership Act, 1932.

13. Mr. Phatak has taken me through the cross-examination of N.P. Agarwal who is examined at Exhibit-149. In the cross-examination he admitted that he has signed on Exhibit-24 as a Partner of M/s.Singhal Enterprises. He has not made any complaint as regards receipts Exhibits-160 & 161 standing in the name of M/s.Singhal Enterprises. He did not produce any evidence about payment of 25% and remaining 75%. Mr. Phatak submitted that N.P. Agarwal did not prove that he paid consideration of Rs.12,55,000/-. In short, he submitted that the entire consideration is paid by M/s.Singhal Enterprises and, therefore, clause (1) of operative part of order dated 12.4.2013 may be modified and the sale certificate may be issued in favour of M/s.Singhal Enterprises.

14. He submitted that N.P. Agarwal and Laxman Singhal entered

into a partnership deed on 25.2.2001. Said partnership deed is produced on record at Exhibit-163. He submitted that to that partnership deed one Kisan Pandurang Kute is a witness. M/s. Singhal Enterprises examined said Kisan Kute and he has proved the contents of the partnership deed. In short, he submitted that the suit property is purchased by M/s. Singhal Enterprises and, therefore, the sale certificate should be issued in the name of M/s. Singhal Enterprises.

15. On the other hand, Mr. Apte appearing for N.P. Agarwal submitted that Order XXI Rule 94 of CPC lays down that where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. He submitted that there is interpolation in the bailiff's report dated 27.2.2001. He submitted that in the order dated 27.2.2001 learned trial Judge recorded that the highest bidder N.P. Agarwal is present before the Court. Auction price offered by him is the highest. He was declared to be a purchaser.

16. He submitted that M/s. Singhal Enterprises took out application Exhibit-79 for issuing a direction to N.P. Agarwal to prove his contention by leading evidence that he participated in the auction in

his individual capacity and that he has deposited money from his personal sources. After hearing both sides, learned trial Judge decided that application on 1.3.2002. In that order, learned trial Judge observed that the bailiff's report shows that name of M/s. Singhal Enterprises is inserted in an unprecedented way subsequently as Sr. No.3 is appearing at two times. Apart from this, the gap between each of the line is also not similar to the total written lines appearing on the bailiff report. It appears that there is interpolation also in the name of M/s. Singhal Enterprises and apparently it appears that it has been written after passing the order on 27.2.2001. Learned trial Judge also referred to the order dated 27.2.2001 passed on the bailiffs report and observed that the then Presiding Officer passed an order recording that N.P. Agarwal is the highest bidder. On perusal of the bailiff report at Sr. No.3, two different entities are shown, namely, M/s. Singhal Enterprises as well as N.P. Agarwal. After perusal of Exhibit-24, learned trial Judge observed that the consideration amount was deposited in cash which means that there is no clue as to from whose account the amount has been withdrawn. As some confusion arose as to who deposited the amount and that is why till date sale certificate was not issued. At this stage there is a controversy as to who deposited the consideration amount. To ascertain the real fact it is necessary for the parties to direct them to

lead evidence then only the Court will be able to ascertain who deposited the entire consideration. In view of these reasons, the trial Judge rejected the application Exhibit-79 and further observed that the Court is not empowered to change the order dated 27.2.2001.

17. Mr. Apte submitted that M/s. Singhal Enterprises has not challenged the order dated 1.3.2002 passed on Exhibit-79 turning down the request of M/s. Singhal Enterprises to modify/correct the order dated 27.2.2001 thereby recording the name of M/s. Singhal Enterprises as the highest bidder. Despite observing that interpolation is made in the bailiff's report so as to show that M/s. Singhal Enterprises is the highest bidder, the learned trial Judge did not initiate proceedings under Section 195 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). He has taken me through the evidence of Laxman Singhal Exhibit-173 wherein he stated in paragraph-4 of examination-in-chief that while recording the bid, the bailiff had recorded name of M/s. Singhal Enterprises, partnership firm through partner N.P. Agarwal. However while passing the order on 27.2.2001, the Court mentioned name of N.P. Agarwal. He thought name was mentioned only for identification purpose. It was further deposed that the receipt dated 28.2.2001 was issued in the name of M/s. Singhal Enterprises Exhibit-160. It bears his signatures as partner of M/s. Singhal Enterprises and

N.P. Agarwal. In the cross-examination by the decree holder, he admitted that when the Court asked who is the highest bidder, N.P. Agarwal stated that he is the highest bidder and accordingly his name is recorded that as the highest bidder. He is however not aware about this fact as he was not present. He is also not aware as to what is the report of bailiff dated 27.2.2001. He further deposed that there is no document to substantiate that any discussion took place between the partners of M/s. Singhal Enterprises for participating in the Court auction. The partnership deed on pages 1 to 3 of the Partnership Deed at Exhibit-163 does not bear the signatures of any partners. The cash book produced at Exhibit-179 only bears his signature.

18. Mr. Apte submitted that N.P. Agarwal participated in the auction in his individual capacity and in view of Order XXI Rule 94 of CPC, learned trial Judge, in his order dated 27.2.2001 recorded his name as the highest bidder. In view of Order XXI Rule 94 of CPC, the Court has to issue sale-certificate in his name. He further submitted that interpolation is made in the record of the Court and, therefore, this is a fit case for initiating criminal proceedings through the Court as contemplated under Section 195(1)(b)(ii) of Cr.P.C..

19. I have considered the rival submissions advanced by learned

Counsel for the parties. I have also perused the material on record as also original record. By order dated 5.8.2013, this Court called for record and proceedings of Special Darkhast No.39 of 2000 and made it clear that if possible this Court will finally dispose of the matter. Accordingly, I have heard the parties at length. The short point that arises for consideration in the present proceeding is whether N.P. Agarwal participated and purchased the property in auction in his individual capacity or M/s. Singhal Enterprises participated in the auction through N.P. Agarwal as a partner and accordingly the sale certificate is to be issued in the name of N.P. Agarwal or in the name of M/s. Singhal Enterprises. It is evident from material on record as also admission of Laxman Singhal that he was not present at the time of auction on 27.2.2001. Perusal of the bailiff's report shows that on that date auction was conducted at 3:00 p.m. and following persons were present :

1. Mr. A. S. Kumbhar
2. Mr. Ketan Patel
3. N.P. Agarwal, resident of Kasarwadi, Pune
4. Shri Prasad Aranake

. Perusal of item No.3 shows that item No.3 is mentioned again above name of Shri N.P. Agarwal as Sr. No.3 and the following words are added “(3)Singhal Enterprises firm through Partner”. In the bailiff

report before the name of Shri N.P. Agarwal again following words are added “Singhal Enterprises firm, through”. Bare perusal of the bailiff's report with naked eyes clearly shows that the words “Singhal Enterprises firms through partner” are added at two places. It is material to note that in the partnership deed the place of business and registered office of M/s. Singhal Enterprises is mentioned as “280, Kasba Peth, Pune-11”. As against this, against item No.3 address of Kasarwadi Pune is shown and not of Kasba Peth, Pune-11. This is the second indication that the words “Singhal Enterprises firm through partner” are added. Thirdly, on the same day order was passed by learned trial Judge on 27.2.2001 wherein it was recorded that the highest bidder N.P. Agarwal was present before the Court. The auction price offered by him was the highest and it was more than the punch valuation. The auction price of Rs.12,55,000/- appears to be adequate and reasonable and, therefore, auction price offered by this auction purchaser (N.P. Agarwal) is accepted. He was declared to be a purchaser.

20. Order XXI Rule 94 reads thus :

94. Certificate to purchaser.- Where a sale of immovable property has become absolute, **the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale**

is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.”
(Emphasis supplied)

21. As noted earlier, M/s. Singhal Enterprises preferred application Exhibit-79 for modification of the order dated 27.2.2001. By order dated 1.3.2002, learned trial Judge rejected the request made by M/s. Singhal Enterprises to change the order passed on 27.2.2001 and record M/s. Singhal Enterprises as the highest bidder. M/s. Singhal Enterprises has not challenged said order. Thus without there being any modification in the order dated 27.2.2001, the words “Singhal Enterprises firm through Partner” are added in the bailiff's report. In the order dated 1.3.2002 also, learned trial Judge has recorded that name of M/s. Singhal Enterprises is inserted in an unprecedented way subsequently as Sr. No.3 is appearing at two times. Apart from this, gap between each of the line is also not similar to the total written lines appearing on the bailiff report. It further appears that there is interpolation also in the name of M/s. Singhal Enterprises and apparently it appears that it has been written after passing the order.

22. After perusing the original record, as also order dated 27.2.2001, I am satisfied that there is clear cut interpolation in the Court proceedings.

23. I have also perused the application dated 13.3.2001 Exhibit-21 made by N.P. Agarwal. In that application it is specifically asserted that N.P. Agarwal participated in the auction. In that application prayer was made for giving time upto April, 2001 for paying the remaining amount. On the same day at 4:20 p.m., learned trial Judge rejected the application by observing that the property was sold in auction on 27.2.2001. As per the provisions contained in Order XXI Rule 85 of CPC, it is mandatory on the part of the purchaser to pay full amount of purchase money into the Court before the Court before the Court closes on the fifteenth day from the sale of the property. This provision does not enable this Court to extend time for payment of purchase money. On the same day N.P. Agarwal made an application Exh.22 setting out therein that as the bank is now closed, he cannot deposit the amount. In view thereof, a cheque in the sum of Rs.9,41,250/- enclosed along with the application may be accepted. On that application, learned trial Judge passed order and disposed of the application as not pressed. In view of the request made by the Advocate for the purchaser (N.P. Agarwal), cheque bearing No.17323 dated 13.3.2001 of Rs.9,41,250/- drawn on Rupee Co-operative Bank Ltd., Branch Bhosari, Pune was returned to the purchaser. Mr. Apte submitted that this cheque is issued from the account of N.P. Agarwal and not from the account of M/s.

Singhal Enterprises. In fact the alleged partnership deed was entered into on 25.2.2001 and the auction took place on 27.2.2001. The deed of partnership is also a got up document and does not bear signature of N.P. Agarwal on page Nos.1 to 3 and only on last page his signature appears. Mr. Phatak could not point out that the cheque was either from the account of Laxman Singhal or was from the account of M/s. Singhal Enterprises.

24. In the impugned order, learned trial Judge observed that Exhibit-24 was filed by M/s. Singhal Enterprises through partners N.P. Agarwal and Laxman Singhal. Both the Partners signed said application and the application was allowed. The Vakalatnama dated 14.3.2001 at Exhibit-23 is of M/s. Singhal Enterprises and signed by N.P. Agarwal and Laxman Singhal. Original receipts Exhibits-160 and 161 are filed on record by M/s. Singhal Enterprises. Thus, considering the documents Exhibits-24, 160 and 161, it is clear that the amount is paid for M/s. Singhal Enterprises by N.P. Agarwal as a Partner. Learned trial Judge accordingly ordered issue of sale certificate to N.P. Agarwal in the capacity of Partner of M/s. Singhal Enterprises.

25. In my opinion, learned trial Judge has totally ignored the bailiff's report dated 27.2.2001, order dated 27.2.2001, order dated

1.3.2002, application Exhibit-21, application Exhibit-22 and the fact of cheque having been deposited by N.P. Agarwal along with application Exhibit-22 dated 13.3.2001. It is only after 14.3.2001, an attempt was made to show that M/s. Singhal Enterprises participated in the auction through N.P. Agarwal and that the consideration is paid by M/s. Singhal Enterprises. Perusal of the evidence as regards payment of consideration shows that the consideration was admittedly paid by way of cash. Both the parties have not substantiated by producing the bank statements showing payment in cash. In view thereof, the payment of consideration in cash is not a decisive factor rather the cumulative effect of the documents on record clearly suggest that N.P. Agarwal participated in the auction in his individual capacity and the same was tried to be changed to "M/s. Singhal Enterprises firm through N.P. Agarwal". Perusal of the original record clearly shows that interpolation is made in the bailiff's report. That is also observed in the order dated 1.3.2002. However, that fact is completely glossed over by learned trial Judge. Much can be said about the partnership deed executed on 25.2.2001. First three pages do not bear signatures and only last page bears signatures. The partnership firm did not have the bank account. The auction was held on 27.2.2001. Laxman Singhal admitted that he was not present on 27.2.2001 when the auction was held. Reliance

placed by Mr. Phatak on Sections 4 and 14 of the Indian Partnership Act, 1932 is also misconceived for the reasons stated earlier.

26. In fact, in my opinion, once learned trial Judge in his order dated 1.3.2002 recorded that there is interpolation in the court record after passing of the order dated 27.2.2001, he should have invoked the provisions of Section 195(1)(b)(ii) of Cr.P.C. and either filed the complaint or authorized in writing to such officer of the Court for lodging the complaint against Laxman Singhal as he is the beneficiary of said interpolation. It is inconceivable that Laxman Singhal alone could interpolate the Court proceedings. It is obvious that interpolation is made in connivance with the staff of the concerned Court. It is, therefore, necessary to direct learned trial Judge to initiate proceedings for lodging complaint under Section 195(1)(b)(ii) of Cr.P.C. and in accordance with law against Laxman Singhal as also against the concerned staff handling the papers and proceedings of Special Darkhast No.39/2000. Hence the following order:

:: O R D E R ::

- i. Clause (1) of the operative part of the impugned judgment and order dated 12.4.2013 passed by the learned 5th Joint Civil

Judge, Senior Division at Pune below Exhibit-12 in Special Darkhast No.39/2000 is quashed and set aside. Sale certificate now shall be issued in the name of N.P Agarwal;

- ii. Learned trial Judge shall initiate proceedings under Section 195(1)(b)(ii) of Cr.P.C. and in accordance with law against Laxman Singhal and the concerned staff handling the proceedings of Special Darkhast No.39/2000;
- iii. It is made clear that the direction given to the trial Court for initiating proceedings under Section 195(1)(b)(ii) of Cr.P.C. shall not be construed as an expression on merits of the proposed proceedings either way;
- iv. Learned Judge who will be seized of that complaint will decide the same on the basis of the evidence on record and in accordance with law uninfluenced by the observations made/findings recorded in this order;
- v. Office shall transmit the original R & P to the trial Court forthwith;
- vi. Rule is made absolute in Writ Petition (st.) No.16370/2013

with no order as to costs. Rule is discharged in Writ Petition No.5012/2013 with no order as to costs. In view of the disposal of the Petitions, Civil Application No.2831 of 2015 for issuing directions to the respondent Nos.2 and 3 in Writ Petition No.5012 of 2013 for filing affidavit does not survive and the same is disposed of. Order accordingly.

vii. At this stage Mr. Phatak orally applies for stay of this order for a period of six weeks. As the stay was operating from 17.6.2013, I find that the request made by Mr. Phatak is reasonable. Hence, this order shall remain stayed for a period of six weeks from today.

(R. G. KETKAR, J.)

Deshmane (PS)