IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2629 OF 2015

Eurolinen Industries Pvt. Ltd. .. Petitioners
V/s.
Isthmus Multimedia Associates
Pvt. Ltd. and ors. .. Respondents.

Mr. Rushabh Shah a/w. Mr. Meghnath Navlani for the Petitioner.
Mr. Vishal Kanade i/b M/s. Desai & Desai for Respondent No.1.
Mr. Nikhil Rajani i/b M/s. V. Deshpande & Co. for Respondent No.3.

CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.
DATE : 27 SEPTEMBER 2016.

P.C.

1] The entire issue revolves around the sale of property in-question which was mortgaged to the financial institution. It is not in dispute that on 16 July 2012, auction of the property in-question was held, at the instance of financial institution, through the Recovery Officer. The 1st respondent-Isthmus Multimedia Associates Pvt. Ltd. was only the bidder, who participated and the bid was at Rs.2.20 Crores. Subsequently, one Mr. Mahendra Singh seems to have come up with an offer of Rs.2.32 Crores for the very same property. On 11 December 2012, the Recovery Officer opining that the best sale consideration must be obtained and opined that there may be re-auction between the parties to see whether higher price would be secured for the property. The matter was adjourned at that stage. It is pertinent to mention that the present writ petitioner was not even a party before the Recovery Officer at that point of time. Subsequently, he seems to have approached the Court in Chamber Summons vide Chamber Summons No. 504 of 2012. By order dated 18 December 2012, learned Single Judge opined that by consent the new offer of the offerer which is for Rs.2.50 Crores (by the present petitioner) shall also be considered in the auction.

2] Reading the order of the Recovery Officer dated 11 December 2012 and the order dated 18 December 2012 passed by learned Single Judge of this Court, what we understand is that if there were to be re-auction in terms of the order dated 11 December 2012, the offer of the present writ petitioner as new offerer can also be considered. However, subsequently, there was no re-auction between Mr. Mahendra Singh and Isthmus Multimedia Associates Pvt. Ltd-auction purchaser. Subsequently, one more direction referring to this so called re-auction for purpose of getting best price was made in the order dated 3 January 2013 at paragraph 3, which reads as under:

> *"3. At this stage, we are not inclined to entertain the Appeal for more than one reason. The recovery proceedings before the Debt Recovery Tribunal are still pending. All that the Learned Single Judge has observed is that the bid of Rs.2.50 Crores of the new offerer (the Sixth Respondent) should also be considered. We clarify that we keep open all the rights and contentions of the parties including of the Appellant who would be at liberty to file all relevant objections before the Debt Recovery Tribunal. Whether the Sixth Respondent should be subjected to terms and conditions to ensure that the offer is indeed a bonafide offer lies within the discretion of the Debt Recovery Tribunal. The effort before*

the Tribunal must obviously be to ensure that the best possible bid is realized to secure the interest of the financial institution which claims to have a subsisting mortgage. We clarify that we have not expressed any opinion on all these aspects which should be duly considered by the Tribunal. Insofar as the impugned direction of the Learned Single Judge is concerned, there is no reason to interfere".

The fact remains till date, no re-auction between Mr. Mahendra Singh and Isthmus Multimedia Associates Pvt. Ltd. was held.

3] Meanwhile, the borrower challenged the confirmation of sale in favour of the auction purchaser. Similarly, another financial institution approached the Recovery Officer contending that they are secured creditors. At that point of time, this writ petitioner again approached this Court in Writ Petition bearing Writ Petition No. 1516 of 2013 with Notice of Motion (L) No. 385 of 2013 and the Division Bench of this Court made the following order on 23 April 2014:

"We are informed that the judgment debtor has challenged the confirmation of the sale in favour of respondent no.1. Till those proceedings are decided, this writ petition cannot be heard. This is for the reason that in the event of challenge to the confirmation of the sale in favour of respondent no.1 being rejected, the question of the present petitioner making any offer in respect of the property may not arise. The petitioner, however, has deposited a sum of Rs.2.5 crores. The other proceedings are likely to take some time. However, at the same time, in order to preserve the rights claimed by the petitioner as well as to safeguard the interest of the third respondent financial institution, it is necessary that the amount of Rs.2.5 crores is secured in the event of the sale of the flat

confirmed in favour of respondent no.1, is set aside. At the same time, it would be unfair to compel the respondent to leave the amount deposited in court. The petitioner's offer to furnish a bank guarantee in view thereof, is accepted.

2 In the circumstances, the writ petition is disposed of by the following order:

(I) Pending the hearing and final disposal of the proceedings adopted by the judgment debtor-respondent no.2 challenging the confirmation of the sale in favour of respondent no.1 and for a period of eight weeks thereafter, respondent no.1 shall maintain status-quo in respect of the flat in question in all respects.

(II) Pending the hearing and final disposal of the said proceedings, the petitioner herein shall keep deposited with the Debt Recovery Tribunal a sum of Rs.25,00,000/-(Rs.Twenty Five Lacs Only) and shall furnish an unconditional guarantee of a nationalized bank in a sum of Rs.2.25 crores together with interest thereon at an adhoc rate of 10% per annum. On furnishing the bank guarantee, the petitioner shall be entitled to withdraw the amount of Rs.2.25 crores deposited with the Debt Recovery Tribunal. The bank guarantee shall be kept alive pending the decision in the said proceedings and for a period of eight weeks thereafter.

(III) The society in which the flat is situated shall accept the outgoings and all other charges and expenses in respect of the said flat from respondent no.1. The same shall be without prejudice to the rights and contentions of all parties as well as of the society. In the event of society not accepting the amounts it will not be open to the society to contend that there would have been any defaults in payments of the amounts to the society.

(IV) There shall be no order as to costs.

3 The notice of motion also stands disposed of accordingly with no order as to costs."

4] By this time, it was very much within the knowledge of the writ petitioner that there was no *inter se* auction between Mr. Mahendra Singh and the auction purchaser and the only challenge was by the borrower challenging confirmation of sale in favour of the auction purchaser. In the order dated 23 April 2014 stated above so far as the right of the writ petitioner in terms of the order dated 18 December 2012, there was no reference that he was still having right to participate in the auction or if Mahendra Singh did not come forward by depositing certain amount for the purpose of re-auction, the re-auction between the present writ petitioner and the auction purchaser should be conducted. In absence of any such liberty being reserved to the writ petitioner by order dated 23 April 2014, in the absence of writ petitioner not challenging the order dated 23 April 2014, he has to be happy with the position that his right to offer more price would come into existence only if the confirmation of sale in favour of the 1st respondent herein (auction purchaser) fails. Otherwise, he never had an independent right to participate in the re-auction between himself and the auction purchaser. His right was limited to participate only if there were to be a re-auction between the auction purchaser and one Mr. Mahendra Singh. In absence of neither the borrower challenging the confirmation of sale nor the financial institution at whose instance the property was sold nor another financial institution, who came with the claim of security in their favour, we fail to appreciate the stand of the writ petitioner. In the light of above discussion and reasoning, we are of the opinion that the writ petition fails.

5] In light of above discussion and observations, whatever money that is deposited with the Debt Recovery Tribunal (DRT) by this petitioner has to be refunded to the writ petitioner by the DRT. Accordingly, the writ petition is disposed of.

(CHIEF JUSTICE)

(M.S.SONAK, J.)