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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***APPEAL (L) No. 381 OF 2016
IN
ARBITRATION PETITION No. 367 OF 2015***

Yatin Vijay Zaveri

...Appellant

Vs.

Tata Capital Financial Services

Ltd. And Ors.

...Respondents

Mr. Rajendra N. Bhagatjee a/w. Nisha Valani for Appellant

Mr. Mayur Khandeparkar a/w. Mr. Ashok Paranjpe a/w. Tushar Kadam
i/b. MDP & Partners for Respondent No.1

Mr. Shilpan Gaonkar a/w. Mr. Vikrant Zunjarrao i/b. Zunjarrao & Co.
for Respondent No.6

Mr. M.S. Deshpande – Court Receiver a/w. Mr. R.G. Ketkar – Ist
Assistant to Court Receiver present

***CORAM : V. M. KANADE &
Mrs. SWAPNA S. JOSHI, JJ***

DATE : OCTOBER 13, 2016

P.C. :

1. Heard Shri Bhagatjee, learned counsel appearing on behalf of the
Petitioner, Mr. Mayur Khandeparkar learned counsel appearing on
behalf of Respondent No.1 and the learned counsel appearing on behalf
of Respondent No.6.

2. It is necessary to narrate the brief facts which are relevant for the purpose of deciding the appeal.

3. An auction was to take place before the Court Receiver in respect of a duplex flat No. 1401 on the 14th and 15th Floor, RNA Arovilla, Situated at Santacruz (West), Mumbai – 400 054. Initially, a bid was given by Mr. Amar Kishorechandra Kothari and Ms. Beena Shah. During the said offer, Mr. Amar Kothari informed the Court Receiver that he was not willing to go beyond the offer of Rs.17,00,00,000/-. Whereas, Ms. Beena Shah increased her offer to Rs.17,01,00,000/- and it was accepted and was confirmed. When the matter came up before the Learned Single Judge for confirmation of auction on 21st September, 2016, the Appellant – Mr. Yatin Vijay Zaveri increased his offer to Rs.17,50,00,000/- for purchase of the said flat. In view of this offer, Ms. Beena Shah withdrew from the bidding process. The Appellant gave an undertaking to pay a demand draft of Rs.50,000/- in favour of the Court Receiver, High Court, Bombay, by 3.00 p.m. on 22nd September, 2016. The Learned Single Judge has further recorded that the Appellant undertakes to pay 25% of the entire consideration within the a period of one week i.e. on or before 28th September, 2016 and the entire balance consideration amount within a period of 30 days i.e. on or before 20th October, 2016. This undertaking

given by the Appellant was accepted. The Appellant has further agreed that if he did not pay any of the installments as agreed, the amount paid by him prior to any default would stand forfeited. It was further agreed that if there was any default on the part of Mr. Yatin Vijay Zaveri in making the payments as agreed, the offer given by Ms. Beena Shah of Rs.17,01,00,000/- would be accepted and would stand confirmed without further reference to this Court. The Learned Single Judge has further recorded that in that event, Ms. Beena Shah would pay the entire amount within seven days from the date of Receiver informing her that her bid is confirmed. On the next date i.e. on 22nd September, 2016, the Appellant – Mr. Yatin Vijay Zaveri had deposited the amount of Rs.50,00,000/-. However, it has recorded by the Court that the first installment of 25% of the entire consideration which comes to Rs.4,37,00,000/- was not deposited on or before 28th September, 2016. The Court, therefore, noted this fact and adjourned the matter to 28th September, 2016. On that date, the Court has recorded that the Appellant informed the Court that he was unable to pay the entire amount of Rs.4,37,00,000/-. The Court, therefore, cancelled his offer and forfeited the amount of Rs.50,00,000/- which was deposited by him and confirmed the offer given by Ms. Beena Shah. On the next date, i.e. on 30th September, 2016, Ms. Beena Shah has agreed to pay the entire

balance consideration on or before 5th October, 2016. On that date, the learned Advocate appearing on behalf of Mr. Yatin V. Zaveri informed the Court that the Appellant – Mr. Y.V. Zaveri, Mr. Amar K. Kothari and Mrs. Mega Amar Kothari were willing to deposit the 25% of the purchase price as agreed. The Learned Single Judge, however, has refused to accept the said offer and on 5th October, 2016, the sale was confirmed in favour of Ms. Beena Shah and suit flat was handed over to her.

4. Mr. Bhagatjee, learned counsel appearing on behalf of the Appellant submitted that the Appellant had fulfilled the terms and conditions of the said auction sale. He submitted that on 28th September, 2016, he had produced a demand draft of Rs.2,87,50,000/- and had also shown willingness to hand over a postdated cheque of 3rd October, 2016 of Rs.1,50,00,000/- . The Court, however, refused to accept the postdated cheque and in view of the order dated 21st September, 2016 confirmed the sale in favour of Ms. Beena Shah. The learned counsel appearing on behalf of the Appellant firstly submitted that the Learned Single Judge has erred in forfeiting the amount of Rs.50,00,000/- deposited by the Appellant. Secondly, he submitted that the Appellant was willing to fulfill the contract and has offered a demand draft of Rs.2,87,50,000/- and a posted dated cheque of Rs.1,50,000/- . He

submitted that there was no reason for the Learned Single Judge to refuse the said postdated cheque.

5. In our view, it will not be possible to accept the said submissions made by the learned counsel appearing on behalf of the Appellant. In the order dated 21st September, 2016, the Learned Single Judge has clearly noted that the Appellant has undertaken to deposit Rs.50,00,000/- on or before 22nd September, 2016 which he did but did not fulfill the second part of the undertaking viz. 25% percent of the entire consideration within a period of one week i.e. on or before 28th September, 2016. The Learned Single Judge, in our view, was justified in canceling the said agreement and contract with the Appellant – Mr. Yatin Vijay Zaveri. The Learned Single Judge has further noted that in fact, Mr. Yatin V. Zaveri was representing Mr. Amar K. Kothari, who had given his final bid of Rs.17,00,00,000/- before the Court Receiver. The Learned Single Judge, therefore, came to the conclusion that the Appellant and the said Amar K. Kothari had tried to outsmart the Court Receiver and the Court by making an offer which he could not fulfill. We are, therefore, not inclined to interfere with the order passed by the Learned Single Judge. Hence, appeal is dismissed.

6. However, we are of the view that so far as the forfeiture of the

amount Rs.50,00,000/- is concerned, though the Appellant has given an undertaking that if he does not pay any of the installments, the amount paid by him prior to default would stand forfeited. Taking overall view of the matter, we are inclined to direct the Court Receiver to refund the amount of Rs.50,00,000/- to Mr. Yatin Vijay Zaveri forthwith.

Sd/-

Mrs. SWAPNA S. JOSHI, J.

Sd/-

V.M. KANADE, J.