

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.18129 of 2016

Between:

M/s. S.N. Construction & Developers,
Rep. by its Managing Partner
S. Sukumar

PETITIONER

And

The State Bank of India,
Stressed Assets Recovery Branch (SARB),
2nd Floor, APSRTC Commuter Amenity Centre,
Business terminal Complex, Koti, Hyderabad -500 095
Rep. by its Authorised Officer.

RESPONSENT



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.18129 of 2016

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

An auction purchaser, whose online bid became a disaster on account of the wrong filling of the digits in a digital system, has come up with the present writ petition seeking a Mandamus to direct the respondent-Bank to refund the Earnest Money Deposit of Rs.22,00,000/- made by him.

2. Heard Mr. Kishore Rai, learned counsel for the petitioner and Mr. B.S. Prasad, learned Standing Counsel for the respondent-Bank.

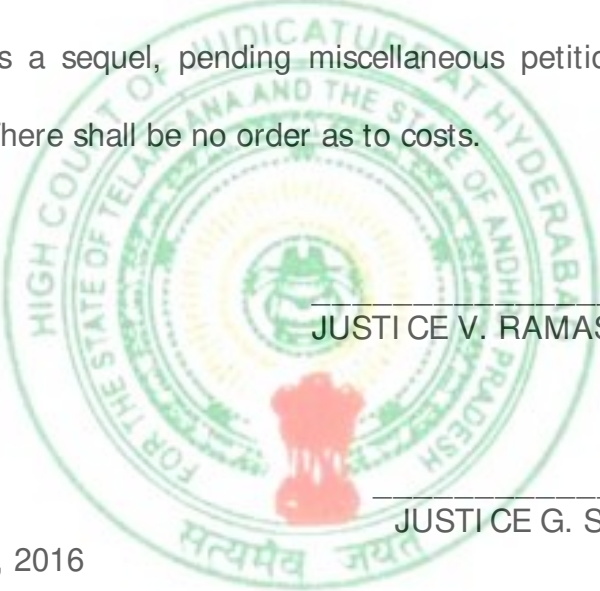
3. Admittedly, the upset price for the property was fixed as Rs.2,20,00,000/-. The petitioner participated in the online bid and first offered a sum of Rs.2,21,00,000/-. It appears from the print out of the online bid furnished by the petitioner that the bids were made 60 times. Every time the petitioner appears to have increased the bid amount by Rs.50,000/- constantly up to Rs.2,61,00,000/-. Thereafter, suddenly his bid amount was raised from Rs.2,61,50,000 to Rs.26,15,00,000. Obviously it appears to be a clerical mistake on the part of the petitioner.

4. Probably due to this, the 49th bid when the petitioner clicked Rs.26,15,00,000/-, did not become the final bid but it proceeded further up to 60th bid. The 60th bid by another party was only Rs.2,65,00,000/-. Therefore it is clear that by an error so apparent from the face of the record, the petitioner has been caught in a catch 22 situation. Hence, the forfeiture of the EMD, in this case, does not appear to be fair and proper.

5. But at the same time, the petitioner cannot seek refund of the entire EMD, since the Bank had obviously incurred expenses in the

conduct of auction. This auction was cancelled and a subsequent auction was conducted, which has also become the subject matter of yet another writ petition. In such circumstances, we are of the considered view that while forfeiture of the entire EMD will be unjust to the petitioner, a direction to refund the entire EMD to the petitioner will be unjust to the Bank. Therefore, the writ petition is disposed of directing the Bank to deduct whatever are the expenses incurred in the conduct of the auction on 11.03.2016 and refund the balance EMD amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

6. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

29th November, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No.18129 of 2016



Date: 29-11-2016

Js.