

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4574 of 2014

ORDER:

The application of the debtor—insolvent to adjudge him as insolvent, was allowed in I.P No.15 of 2004 and from the order of the Court, the property vested with the official receiver, who is 1st respondent herein, who has brought the property to sale by public auction pursuant to the direction to distribute the properties by Management and sale among the creditors and the sale was knocked in favour of highest bidder for Rs.1,00,000/- and the 2nd respondent herein is the highest bidder. The revision was maintained by the debtor—insolvent, having been aggrieved by the order 20.08.2014 passed in I.A. No.1130 of 2009 dismissing his application to set aside the auction conducted by the official receiver, saying that the said sale is a distress sale and it could have been fetched nearly Rs.2,00,000/- and knocked out for only Rs.1,00,000/-. In fact, as per Section 68 of the Provincial Insolvency Act, 1920, a person who is aggrieved of any Act or decision of the receiver, may apply to the Court within 21 days from the date of commencement of auction by the official receiver. The said 21 days shall commence from the date of determination to bring the property to sale by ordering public auction by publication and not even from the date of sale knocked in favour of the highest bidder in the public auction and even as observed by the lower Court, the sale of the schedule property in favour of the highest bidder was allowed on 11.06.2009, whereas the application was filed on 04.08.2009, which is about one month 20 days after the sale knocked in favour of the highest bidder and the trial Court, thereby, dismissed the application.

2) Heard learned counsel for the revision petitioner (debtor—insolvent) and the learned counsel for 2nd respondent—auction

purchaser and perused the material on record.

3) Leave about the other merits of the matter, mere process of sale itself is not liable to be set aside in the absence of showing any fraud or lack of bonafides in conducting the sale, such as any collusion as once it is by public auction after publicity and the debtor—insolvent can as well participate, if at all, through anybody to show how the price is not representing the market value even when it is by public auction so fetched even to call as knocked the sale by public auction for a low price or to style as distress sale. Once such is the case, there is no foundation on that ground. Apart from that the application was not filed within 21 days from the date of commencement of auction by the official receiver much less with any application under Section 5 of the Limitation Act, even the same is taken as applicable to condone the delay beyond 21 days as rightly concluded by the lower Court and for this Court while sitting in revision, there is nothing to interfere but for to confirm the impugned order.

4) Accordingly, the Civil Revision Petition is dismissed. No costs.

5) As a sequel, miscellaneous petitions if any pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.03.08.2016

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