**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.3777 of 2016
Date of Decision : 25.02.2016**

Vijay Kumar

....Petitioner

Versus

State Bank of India and others

....Respondent

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the orders dated 01.04.2008 (Annexure P-10), 23.10.2013 (Annexure P-11) and 18.12.2015 (Annexure P-19), whereby the auction sale of the property of the petitioner has been upheld.

In execution of RC No.525/06 for Rs.36,91,374.53 in case of SBI Vs. Madan Lal Lakhpati Rai, 75% land ad-measuring 2 Kanals within the premises of Gurdeep Cycle (Singla and Co.) Single Cycle Road, Dahandari Kalan, Ludhiana owned by the petitioner was put to public auction on 05.02.2007. The highest bidder M/s Ashoka Inds. Fasterers was declared as purchaser for a sum of Rs.12.10 lacs. The petitioner raised objections stating that the auction held on 05.02.2007 was not a public auction and deserved to be set aside. It was alleged that the land had been sold at throw away price. No tent or banner was affixed and the auctioneer had connived with the purchaser. He also claimed to have a better buyer, who was ready to purchase the land for Rs.21 lacs. The matter was considered by the Recovery Officer DRT-II Chandigarh and on the basis of the reply given by the Bank, auction purchaser, report of the Court Auctioneer, it was concluded that the auction had been conducted as per Rules. Accordingly, all objections related to the procedure of auction were dismissed. However, the issue regarding offer of Rs.21 lacs were kept open. Vide notice dated 11.3.2008, the petitioner was given one more chance to bring the best buyer for Rs.21 lacs and deposit the amount within 7 days to show his bonafide. It was clearly mentioned in the notice that in case, he fails to deposit the amount within the given period, his objections would be dismissed and the sale would stand confirmed in favour of the auction purchaser. The petitioner did nothing in response to this. Instead he moved another application/ objections dated 18.03.2008 i.e. after more than a year of the auction for setting aside the auction and offering to bring a buyer for Rs.18 lacs. Along with this application, an affidavit by one Sh. Shivam Aggarwal was filed offering to purchase the land for Rs.18 lacs. Demand drafts for Rs. 4.50 lacs i.e. 25% of the offered money were enclosed with the application.

The Recovery Officer concluded that the intention of the petitioner was not bonafide. It was noted that the objections were raised by the petitioner without deposit of amount along with interest and penalty as required under Rule 60 of the 2nd Schedule of the Income Tax Act, 1961. As against the initial offer of Rs. 21 lacs offer for lesser amount of Rs. 18 lacs was made after a lapse of more than one year without full amount of the offered purchase money. Accordingly, vide order dated

1.4.2008 the public auction was considered satisfactory and confirmed.

Against this order of the Recovery Officer, the petitioner, the guarantor and the intending purchaser filed an appeal under Section 30 of the Recovery of Debts and Dues to Bank and Financial Institutions Act, 1993. The Debts Recovery Tribunal considered all the objections of the petitioner and others and dismissed the appeal vide order 23.10.2013. With regard to the objections of the petitioner regarding the change of date of auction from 28.01.2007 to 05.02.2007, it was observed that the same had been done to rectify an error as the earlier date i.e. 28.01.2007 happened to be a Sunday. Proper intimation, publicity and publication was given regarding the changed date besides affixing notice at the site. Three bidders were present at the time of auction and had tendered draft for earnest money. It was further observed that the Recovery Officer had given opportunity to the petitioner asking him to bring a buyer for Rs.21 lacs as per his offer within 7 days to show his bonafide but the petitioner failed to comply with the same. Thereafter, on 18.03.2008, i.e. more than a year after the auction, he made an offer for Rs.18 lacs, which was rightly rejected by the Recovery Officer. Accordingly, no irregularity was found as the property had been put on sale after getting valuation and for the best price as per prevalent market condition.

Dissatisfied with the said order, the petitioner preferred an appeal before the Debts Recovery Appellate Tribunal, Delhi.

During the course of the hearing before the Appellate Tribunal on 08.10.2014, counsel for the petitioner was asked if he had a better buyer who could offer the present prevalent rate. Counsel for the petitioner asked for one week's time, which was granted. On the next date, the petitioner and father of Sh. Shivam Aggarwal were present. The petitioner stated that he had not been to arrange any better buyer. The father of Sh. Shivam Aggrawal, though stated that he was ready to offer 10% more. On the next date i.e. 03.11.2014, the counsel for the petitioner stated that he had a better buyer, who was ready to pay Rs. 6 lacs upfront and had offered to deposit a total amount of Rs. 24 lacs within a period of one month. The Appellate Tribunal did not accept this request. Instead, to ascertain the bona fide of the intending buyer, he was directed to deposit Rs.24 lacs within 10 days. The intending buyer this time, was a person named Anand Goyal. He deposited an amount of Rs. 24 lacs with the Registrar of the Tribunal. An option was given to auction purchaser to match the bid, which he did. The petitioner then stated that he would pay a sum of Rs.25 lacs. This amount was also matched by the auction purchaser. Thereafter, the petitioner offered to deposit an additional amount of Rs.50,000/-. This amount was also matched by counsel for the auction purchaser. The petitioner expressed an intention to further enhance the bid amount at which the counsel for the auction purchaser raised objections that the appeal itself was not maintainable as the petitioner had not made any pre-deposit regarding the same nor made any prayer for seeking waiver of the requirement of pre-deposit. This objection was raised on 10.04.2015. The counsel for the petitioner had prayed for time to move an appropriate application. However, more than three hearings and seven months of the objection being raised still further time was sought to move such an application on 03.11.2015, which was allowed subject to payment of Rs.2,000 as costs and it was observed that if the petitioner failed to move the application within one week, the appeal would heard as it was. Though the costs were paid but no application regarding waiver of the pre-deposit was found on record. Accordingly the Ld. Appellate Tribunal held that the appeal was liable to be dismissed as not maintainable. The argument of the petitioner seeking waiver of pre-deposit on the ground that the property stood sold for an amount of Rs.12.10 lacs and as such he is not required to make any further deposit was rejected by holding that as he was challenging the sale, he cannot seek the benefit of the amount realized from the sale of the property, which in the event of the sale being set aside would have to be returned to the auction purchaser.

However, despite holding the appeal to be not maintainable, the learned Appellate Tribunal considered the issue on merits as well.

It was held that the intending purchaser was a newly introduced person, who had no right to bid for the property. It was held that the petitioner having earlier stated that he had not been able to arrange a better buyer, could not be permitted to introduce one person after another as intending buyer. If any, person had any interest to buy the property, he should have participated in the auction. It was further held that the DRT was justified in dismissing the petitioner's appeal as he had failed to comply with the provisions of Rule 60 of the 2nd Schedule of the Income Tax Act,1961 and that the petitioner had been able to sustain the appeal primarily by misleading the Tribunal by introducing another person, who was not before the Fora below.

However, considering that the auction purchaser had agreed to participate in the inter- se bidding and expressed his readiness to pay a sum of Rs.25 lacs, it was directed that he could not resile from his commitment and he was accordingly directed to deposit the balance amount with the Bank failing which, the Bank would be entitled to recover the amount from him in accordance with law.

Learned counsel for the petitioner has primarily argued that as the learned Appellate Tribunal had permitted the petitioner to bring a better buyer and as the auction purchaser had matched the price of the better buyer and parties had expressed their readiness to go for inter se bidding, the learned Appellate Tribunal was in error in having dismissed the appeal on the ground that the petitioner had introduced a different buyer before the Tribunal He states that the petitioner is even now willing to offer an additional 10% amount over and above the amount already deposited before the learned Appellate Tribunal.

We have considered the aforesaid submissions but are unable to agree with the learned counsel for the petitioner.

No irregularity in the auction has been pointed by the learned counsel for the petitioner and all the Forums below have held that the auction was conducted in a fair and transparent manner. The petitioner in his first application before the Recovery Officer offered to produce a better buyer for Rs.21 lacs. Vide notice dated 11.03.2008, he was given seven days' time to deposit the amount of Rs.21 lacs to show his bonafide which he failed to do. Instead after the expiry of the seven days on 18.03.2008, he again filed another application against the auction with a permission to bring a buyer for Rs.18 lacs. Demand draft of Rs. 4.50 lacs i.e. 25% of the intended amount were enclosed with the application. Considering that the petitioner had defaulted in making good the offer of deposit Rs.21 lacs within one week and he had moved the second application after more a year of the auction, the Recovery Officer rightly found that the intention of the petitioner was not bona fide and he merely intended to delay the proceedings.

The learned Appellate Tribunal has rightly held that the attempt by the petitioner to introduce a different buyer (Sh. Shivam Aggarwal), with the offer of Rs.18 lacs after one year of the auction, and that too after his failure to make good the initial offer of Rs. 21 lacs within the stipulated period had been unfairly entertained. Resultantly, the petitioner even successfully misled the Appellate Tribunal also to urge that he had a better buyer which led to inter se bidding. Thereafter, he introduced the father of Sh. Shivam Aggarwal and still later Mr. Anand Goyal as the intending buyer. Thus, introducing a new purchaser every time.

Despite many legal hurdles in the maintainability of his appeals the petitioner has been given more than a fair latitude to furnish a better buyer. Clearly this process of inter se bidding cannot be carried on *ad infinitum*. The auction was held on 05.02.2007. No legal or procedural infirmity having been found in the auction proceedings, it is high time that the proceedings attain finality. As against the original auction price of Rs.12.10 lacs, the auction purchaser has now been held bound to deposit a sum of Rs.25 lacs.

Thus, we do not find not find any infirmity in the impugned orders.

Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

25.02.2016
Atul