

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

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Regular Second Appeal No.6492 of 2014 (O&M)
Date of Decision: January 19, 2016

M/s Tarun Wires Private Limited, Chandigarh

...Appellant

Versus

Punjab Financial Corporation, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
with Mr. Rajesh Narang, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 22.01.2011 passed by the Additional Civil Judge (Senior Division), S.A.S. Nagar, Mohali, whereby the suit for declaration to the effect that the sale of the Industrial Unit of the appellant-plaintiff, situated at E-151, Phase 7, Industrial Area, S.A.S. Nagar, Mohali, in favour of respondent No.4-Jasbir Kaur by the Punjab Financial Corporation-respondent No.1 at the rate of ₹24.30 lacs, although the price assessed was ₹40.36 lacs, be set aside, specially when no opportunity has been given to the appellant-plaintiff to compete with the respondent-defendant No.4-Jasbir Kaur, rendering the said sale deed null and void and inoperative as it was primarily based upon collusion between respondents-defendants 1 and 4, has been dismissed, appeal against which preferred by the appellant-plaintiff after dismissal of the suit, has also been dismissed by the Additional District Judge, S.A.S. Nagar, Mohali, on 24.09.2014.

2. It is the contention of learned senior counsel for the appellant that the auction of the Unit because of non-payment of the dues was fixed

through tender on 18.02.2001. On the receipt of the bids of 15.03.2001 by respondents 1 and 2, the appellant-plaintiff sought ten days' time to bring in a better buyer so that maximum price could be obtained of the Unit which was in the Plot No.E-151, Phase 7, Mohali. The said application/representation was admittedly received by respondent No.1 and a communication was sent to the appellant-plaintiff giving him such time but the same was addressed on the wrong address because of which the same could not be received by the appellant-plaintiff and as a matter of fact, he received the same on 26.03.2001. On 24.03.2001 being Saturday and 25.03.2001 a Sunday, he approached the respondent-defendant No.1 on 26.03.2001, the first working day and requested that he be given time to bring a better buyer. The said request was not apparently accepted, rather the bid was finalised in favour of respondent-defendant No.4. He contends that once an opportunity has been claimed and the said request has been accepted, the respondents should have taken care to send notice at the correct address which admittedly has not been done by them for which the appellant-plaintiff cannot be made a victim as he has been deprived of his valuable right of getting the best value out of his property. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned senior counsel for the appellant and with his able assistance, have gone through the impugned judgments but am not able to accept his plea.

4. Every party, who approaches the Court, has to be truthful and his *bona fides* should be clear rather overboard. The factum of default is not disputed by the appellant-plaintiff in making payment of the loan amount

which was given by respondent-defendant No.1-Punjab Financial Corporation. Efforts were made to sell the property because of the non-payment of the dues. Admittedly, an open auction through tender has been carried out. In the said process, the bid received of respondent-defendant No.4 has been accepted.

5. The story does not end here, although a plea has been taken that the appellant-plaintiff has been denied due opportunity to participate in the process of getting the maximum value of his property, however, this aspect cannot be accepted in the light of the fact that the appellant-plaintiff had, prior to filing the suit, approached the High Court by filing Civil Writ Petition No.5080 of 2001. In the said writ petition, on 04.04.2001, the learned counsel for the appellant-plaintiff had undertaken to produce a draft for an amount of ₹27 lacs on the date to be fixed by the Court i.e. 30.04.2001. On the basis of the assurance given by him, notice was issued in the matter and a restraint order was passed qua the Punjab Financial Corporation from making the allotment or handing over the possession of the disputed property to any other person till further orders. On the date fixed i.e. 30.04.2001, the appellant-plaintiff did not produce the said draft and the matter was adjourned to 17.07.2001. On the said date, again it appears that the petitioner was unable to produce the demand draft of ₹27 lacs, as has been undertaken by the counsel on 04.04.2001 and the following order was passed:-

“Learned Counsel for the petitioner prays for permission to withdraw the writ petition with liberty to approach the court again to challenge the sale of the machinery to a third party.

Allowed as prayed for.

Dismissed as withdrawn”.

6. In the light of the above order, the Division Bench of this Court on 17.07.2001, permitted the appellant-plaintiff to withdraw the writ petition. It requires to be mentioned here that no permission was sought for by the counsel for the appellant-plaintiff with regard to pursuing the claim qua the sale of plot in question. Although, no liberty has been granted by the Court while permitting the withdrawal even to approach the Court again to challenge the sale of the machinery to the third party. However, if a lenient view is taken, the permission, if any, was sought with regard to approaching the Court qua the challenge to the sale of the machinery to a third party only. No permission was even sought for approaching the Court to challenge the sale of the industrial plot. This clearly shows that the appellant-plaintiff till 17.07.2001 was unable to arrange for a better purchaser than the one, who had purchased the property in auction. It, thus, cannot be said that due opportunity has not been granted to the appellant-plaintiff to bring a better buyer.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.15463-C of 2014, stands disposed of as infructuous.

January 19, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**