IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 18655 of 2017
Date of Decision: December 20, 2017

M/s Tirupati Paddy Products

......Petitioner

versus

State Bank of India

.....Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.

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Present: Mr. V.K. Sachdeva, Advocate
for the petitioner

Mr. Rakesh Gupta, Advocate
for the respondent

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Sudhir Mittal, J.

The petitioner has filed this writ petition with a prayer for directions to the respondent–Bank to refund an amount of ₹ 5,55,12,500/- alongwith interest. He has further prayed that the Bank may also be directed to pay damages for the harassment suffered by the petitioner due to its illegal acts.

2. Respondent–Bank issued a Public Notice dated 23.02.2017 (Annexure P-1) for E-auction of paddy and rice stocks hypothecated with it by respondent No. 2. The said stock was being auctioned, as respondent No. 2 had defaulted in payment of its loan amount. A total of four lots of paddy and four lots of rice of different quantities was being put to auction. The reserve price for the entire stock was mentioned as ₹ 1118 lacs. The last date for deposit of 10% of the reserve price was 04.04.2017. Auction was to be held on 06.04.2017. The successful bidder was required to complete payment of 25% of the auction amount on being declared as such. The balance 75% was to be paid within the next 15 days i.e. upto 21.04.2017.

3. The relevant terms and conditions of the auction were :-

(a) "As is where is and as is what is basis."

(b) Every bidder was required to make its own enquiry regarding the title of the stock and its specification.

(c) The bidding was to be held on scheduled date and time and there would be no change permissible.

(d) The earnest money deposited would not bear any interest.

(e) Any default in payment by successful bidder would entitle the bank to forfeit the amount already deposited.

The highest bidder was entitled to lift the stock within 24 hours of close of bidding after payment of the entire amount.

4. The petitioner was the successful bidder in respect of three lots of paddy and four lots of rice for an amount of ₹ 1231 lacs. An amount of ₹ 195.65 lacs was deposited on 06.04.2017 to complete 25% of the amount (₹ 112 lacs had been deposited on 03.04.2017 i.e. 10% of reserve price). On 21.4.2017 (the last date for depositing the balance 75%), the petitioner wrote letter Annexure P-4 requesting for extension of time to lift the stock of rice on the ground that respondent No. 2 had filed a writ petition challenging the auction notice and release of paddy stock had been stayed. An undertaking was also given that the stock of rice would be lifted within a week of the decision of the High Court. This was replied to by the respondent-Bank by letter dated 24.04.2017 (Annexure P-5) declining the request for extension as made by the petitioner. However, time was granted till 29.04.2017. Consequently, the petitioner lifted three lots of rice after making full payment on 25.04.2017, 28.04.2017 and 29.04.2017. The fourth lot of rice has, however, not been lifted till date. The writ petition filed by respondent No. 2 challenging the auction notice was dismissed as withdrawn vide order dated 01.05.2017 as it was not in a position to pay the debt of the respondent-Bank. Thereafter, the petitioner wrote to the respondent–Bank on 03.05.2017 (Annexure

P-8) requesting it to get the quantity of the stock verified to facilitate early lifting thereof. This was followed by letter dated 6.5.2017 (Annexure P-10) reiterating its request for verification of the stock and indicating that the amount paid in respect of the stock which had not been lifted be refunded since market conditions were unfavourable. Yet, it lifted one lot of paddy on 12.05.2017 after paying the balance 75% in respect thereof without any objection from the respondent-Bank. On 21.05.2017 (Annexure P-12), the petitioner submitted a request to the respondent–Bank to accept payment of balance 75% in respect of two lots of paddy in four installments. This request was naturally rejected by the respondent–Bank vide its letter dated 22.5.2017 (Annexure P-13). Thereafter, the petitioner alleges that lifting of the stock was interfered with by respondent No. 2 forcing it to approach the respondent–Bank to facilitate the lifting of stock by organizing police help. The respondent–Bank immediately responded and requested the Deputy Commissioner, Muktsar to facilitate the lifting of the stock and also sent a copy to respondent No. 2. On 23.5.2017, the petitioner made payment of balance 75% in respect of another lot of paddy on receipt of delivery order. However, on 25.05.2017 (Annexure P-16), he again requested the respondent–Bank to arrange for police help as respondent No. 2 was creating hindrance. It appears that the petitioner could not lift the second lot of paddy despite making full payment but the reasons therefor are not forthcoming from the record. Had the hindrance at the hands of respondent No. 2 continued, the petitioner surely would have communicated with respondent No. 2 for arranging immediate lifting of the stock. No such correspondence is available on the record except letter dated 29.05.2017 (Annexure P-17) complaining to the respondent–Bank that there was shortage in one lot of rice and that the quality in another lot was not the same as mentioned in the auction notice (Annexure P-1). Thus, request was made for refund of earnest money in respect of the lot of rice for which 75% of the bid amount had not been deposited, refund of amount equivalent to the alleged shortage in another lot of rice and refund of the entire amount in respect of the lot of paddy which was not lifted by the petitioner. Since the respondent–Bank did not accede to the request of the petitioner, the present writ petition has been filed for refund of the amount mentioned hereinabove, which, according to the petitioner has been retained illegally by the respondent–Bank.

5. It is pertinent to note that no communication from the respondent-Bank has been placed on record indicating that the amount deposited by the petitioner had been forfeited on account of its failure to lift the stock of rice and paddy in accordance with the specified time schedule. On the other hand, the record indicates that the respondent–Bank accepted payment submitted by the petitioner even on 23.05.2017 although the said date was beyond a period of 15 days after the stay order granted by this Court, ceased to be in-existence.

6. Notice of motion was issued and the respondent–Bank was served through dasti process. As is apparent from orders dated 25.9.2017 and 4.10.2017, time was granted to the learned counsel for the petitioner to seek fresh instructions. The said orders do not indicate the nature of the instructions to be sought by the learned counsel for the petitioner but, we remember that we had asked him to convey to the Court whether the petitioner was still interested in lifting the balance quantity of rice and paddy. The order dated 31.10.2017 records that the learned counsel for the petitioner wished to argue the case on merits obviously because the petitioner was not interested in lifting the balance stock.

7. We have heard learned counsel for the parties and have carefully gone through the case.

8. From the events narrated hereinabove, it emerges that from the very beginning the petitioner did not abide by the terms and conditions of the auction notice. The first three lots of rice were lifted after expiry of 15 days from the date

of auction. Thereafter also one or the other excuse was put forward by it for postponing the payments. Even though terms of the auction required the bidders to ascertain for themselves the quality of the stock, the quantity of the stock and the title thereof before submitting their bids, the petitioner made requests to the respondent–Bank to get the stocks verified. It also requested for payments to be made in installments and complained of the quality of the stock. The excuse of interference by respondent No. 2 is not believable because the petitioner itself had lifted the stock earlier from the same godowns Thus, the impression created is that the petitioner was somehow trying to get out its liability to make full payment and lift the stocks purchased by it.

9. Having held so we now proceed to examine the judgments referred to by learned counsel for the petitioner. The first judgment relied upon by him is ***Haryana Financial Corporation and another vs. Rajesh Gupta, 2010(1) SCC 655*** wherein the writ petition had been filed before the High Court challenging the action of the Haryana Financial Corporation of forfeiting an amount of ₹ 2.5 lacs deposited by way of earnest money. The writ petition was allowed and petition seeking Special Leave to Appeal was filed before the Hon'ble Supreme Court of India. One of the grounds raised before the Hon'ble Supreme Court of India was of non-maintainability of a writ petition in a contractual manner. Keeping in view the facts and circumstances of the case, it was held by the Hon'ble Supreme Court of India that the Haryana Financial Corporation had acted unfairly because it did not disclose to the writ petitioner that the property being auctioned by it had no independent passage and was not suitable for development. The judgment is distinguishable on facts. The next judgment relied upon is ***The D.F.O. South Kheri and others vs. Ram Sanehi Singh, 1971(3) SCC 864*** in which it has been held that a writ petition would be maintainable even if the right to relief arises out of an alleged breach of contract where the action complained of is arbitrary and unlawful.

Similarly in ***Zonal Manager, Central Bank of India vs. M/s Devi Ispat Ltd. & Ors., 2010(11) SCC 186,*** the law laid down is that an action of an authority which is 'State' would be amenable to challenge in writ petition jurisdiction of this Court if the same is discriminatory, unfair and unreasonable. Thereafter, reliance has been placed upon a Division Bench judgment of this Court in ***M/s Leading Men Power Solutions vs. Haryana Urban Development Authority and others (CWP No. 6046 of 2012) decided on 10.07.2012*** wherein a writ petition was filed challenging the cancellation of contract and the same was allowed after finding that before cancellation of the contract principles of natural justice have been violated and no reasons had been mentioned in the order of cancellation. There can be no quarrel with the proposition enunciated in the said judgment, however, the same can not be applied to this case because we have not found any unfairness, arbitrariness or unreasonableness in the actions of respondent No. 1. Learned counsel for the petitioner also relies upon ***Mohammed Gazi vs. State of M.P., 2000(4) SCC 342.*** This judgment is not applicable on the face of it because the facts thereof are completely distinguishable. In that case Tendu leaves had been put to auction. Person 'X' (respondent No. 4) was the successful bidder and deposited his security amount but the same was not accepted and the tender was cancelled on account of certain complaints. Fresh tenders were invited in which the appellant was declared the highest bidder. Meanwhile, respondent No. 4 in the said case, filed a writ petition in the High Court challenging the cancellation order and notice inviting fresh tenders. In this writ petition interim relief was granted in his favour restraining the respondents therein from executing any fresh agreement pursuant to the second tender. The appellant was not impleaded as party and during the pendency of the writ petition he executed purchase agreement after depositing balance security. The writ petition was subsequently partially allowed and the earnest money deposited by respondent No. 4 therein was directed to be refunded.

Thereafter, the appellant requested the respondent to refund security amount as meanwhile the Tendu leaves had already perished. The respondents then sent an ante dated letter to the appellant asking him to execute the agreement and deposited the remaining tender price. This was challenged by way of a writ petition filed in the High Court and the writ petition was allowed. Under the said circumstances, the Hon'ble Supreme Court of India had held that delay in execution of the agreement was caused on account of the stay granted in the earlier writ petition in which the appellant was not a party and following the maxim *actus curiae neminem gravabit* an act of Court shall prejudice no one, the writ petition was held to be maintainable. Such is not the situation in the present case. The judgments referred to herein before are, thus, not applicable in the present case.

10. It is now settled law that a writ Court shall refuse to exercise its jurisdiction in respect of a purely contractual dispute. However, we have examined the merits of this case as a Court of equity and in exercise of equity jurisdiction, we permit the petitioner to lift the lot of paddy for which entire consideration has been paid within a period of two weeks from the date of receipt of a certified copy of this judgment. The petitioner is also at liberty to lift the stock of rice/paddy in respect of which 25% earnest money has been paid within the same period. Needless to say that the petitioner would be entitled to lift the stock equivalent to the money value of 25% earnest money. In case the petitioner does not deem it appropriate to lift the stock in terms of this order, it would be at liberty to take re-course to any other remedy or approach any competent forum, for redressal of its grievances.

11. The writ petition is disposed of accordingly.

[SUDHIR MITTAL]
JUDGE

[SURYA KANT]
JUDGE

December 20, 2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No