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

CWP No.7979 of 2016 (O&M)
Date of decision: January 20, 2017

Anand Goel ---Petitioner

Versus

State Bank of India and others ---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Arvind Rajotia, Advocate for the petitioner.

Mr.Rajnish K. Jindal, Advocate for respondent No.1.

Mr.Amit Jain, Advocate for respondent No.2.

Mr.V.K.Sachdeva, Advocate for respondent No.3.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing of order dated 18.12.2015 (Annexure P-6) passed by Debts Recovery Appellate Tribunal, Delhi (for short 'the DRAT'), wherein it has been held that the petitioner, who was introduced as an intending purchaser during proceedings before the DRAT had no right to bid for the property.

In execution of RC No.525/06 for ₹ 36,91,374.53 in case titled as SBI Vs. Madan Lal Lakhpati Rai, 75% land measuring 2 Kanals within the premises of Gurdeep Cycle (Singla and Co.) Single Cycle Road, Dahandari Kalan, Ludhiana owned by Vijay Kumar respondent No.2 (for short " the borrower") was put to public auction on 05.02.2007. The highest bidder M/s Ashoka Industrial Fasteners- respondent No.3 (for short "auction purchaser") was declared as purchaser for a sum of ₹ 12.10 lacs.

The borrower raised objections alleging 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 auction purchaser. He also claimed to have a better buyer, who was ready to purchase the land for ₹ 21 lacs. The matter was considered by the Recovery Officer DRT-II Chandigarh and on the basis of the reply given by the Bank, the auction purchaser and 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 ₹ 21 lacs by the borrower was kept open.

Vide notice dated 11.3.2008, the borrower was given one more chance to bring better buyer for ₹ 21 lacs and deposit the amount within 7 days to show his bona fide. It was clearly mentioned in the notice that in case he fails to deposit the amount within this period, his objections would be dismissed and the sale would stand confirmed in favour of the auction purchaser. The borrower did nothing in response to this notice. Instead, he filed 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 ₹ 18 lacs. Along with this application, an affidavit by one Shivam Aggarwal was filed offering to purchase the land for ₹ 18 lacs. Demand drafts for ₹ 4.50 lacs i.e. 25% of the offered money were enclosed with the application. The Recovery Officer concluded that the intention of the borrower was not bonafide. It was noted that the objections were raised by the borrower 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 ₹ 21 lacs, offer for lesser amount of ₹ 18 lacs was made after a lapse of more than one year and that too without deposit of full amount of the offered purchase money. Accordingly, vide order dated 1.4.2008 the Recovery Officer dismissed the objections. The public auction was considered satisfactory and confirmed.

Against this order of the Recovery Officer, the borrower, the guarantor and the intending purchaser Shivam Aggarwal filed two separate appeals under Section 30 of the Recovery of Debts and Dues to Bank and Financial Institutions Act, 1993 (for short "1993 Act"). The Debts Recovery Tribunal (for short "the tribunal") considered the objections of the borrower and intending purchaser and dismissed the appeals vide order 23.10.2013. With regard to the objections of the borrower 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 and publicity 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 borrower asking him to bring a buyer for ₹ 21 lacs as per his offer within 7 days to show his bona fide but he 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 ₹ 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 at the best price as per prevalent market condition.

Dissatisfied with the said order, the borrower and the intending purchaser Shivam Aggarwal preferred two separate appeals before the DRAT, Delhi. During the course of the hearing before the DRAT on 08.10.2014, counsel for the borrower was asked if he had a better buyer who could offer the present prevalent rate. Counsel for the borrower requested for one week's time, which was granted. On the next date, the borrower and father of Shivam Aggarwal were present. The borrower stated that he had not been able to arrange any better buyer. The father of Sh. Shivam Aggrawal, though stated that he was ready to offer 10% more. On 03.11.2014, the counsel for the borrower stated that he had a better buyer, who was ready to pay ₹ 6 lacs upfront and had offered to deposit a total amount of ₹ 24 lacs within a period of one month. The DRAT did not accept this request. Instead, to ascertain the bona fide of the intending buyer, he was directed to deposit ₹ 24 lacs within 10 days. The intending buyer introduced at this stage was the petitioner. He deposited an amount of ₹ 24 lacs with the Registrar of the DRAT. An option was given to auction purchaser to match the bid, which he did. The borrower then stated that he would pay a sum of ₹ 25 lacs. This amount was also matched by the auction purchaser. Thereafter, the borrower offered to deposit an additional amount of ₹ 50,000/-. This amount was also matched by counsel for the auction purchaser. The borrower 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 borrower 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 ₹ 2,000 as costs and it was observed that if the borrower failed to move the application within one week, the appeal would be heard on merits. Though the costs were paid but no application regarding waiver of the pre-deposit was found to have been moved. Accordingly the Ld. Appellate Tribunal held that the appeal was liable to be dismissed as not maintainable.

However, despite holding the appeal to be not maintainable, the learned DRAT considered the issues on merit as well. It was noted that the borrower had been given enough opportunity to bring a better buyer but he brought a buyer for a sum, which was much less than what he had stated before the Tribunal. It was held that the borrower had been able to sustain the appeal primarily by misleading the Tribunal by introducing yet another person, who was not before any Fora below. The borrower could not have any justification to introduce a stranger as buyer at the appellate stage. Reliance was placed on a decision of Hon'ble the Supreme Court in ***Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.***, **(2008) 9 SCC 299**. As regards the petitioner, it was held that he being a newly introduced person had no right to bid for the property. Further the buyer having earlier stated before the DRAT that he had not been able to arrange the 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 then he should have participated in the auction. A person who was introduced as intending buyer could not claim any interest in the property, which was sold in execution of Recovery Certificate and thus, the intending buyer could not have filed any objection before the Recovery Officer. Even appeal filed by such intending buyer under Section 30 of the 1993 Act and subsequent appeal before the DRAT was not maintainable.

But taking note of the fact that the auction purchaser after agreeing to participate in the inter-se bidding had expressed his willingness to pay the sum of ₹ 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 argued that the petitioner was introduced as a buyer as per the direction of the DRAT itself and that to show his bonafide he had deposited ₹ 24 lacs in the month of November, 2014. Vide order dated 13.11.2014 the DRAT gave an option to the auction purchaser to match the bid and the case was adjourned for 29.12.2014 to enable counsel for auction purchaser to seek instructions. On 29.12.2014, counsel for the auction purchaser gave his consent to match the bid given by the petitioner. On 03.02.2015, the petitioner was ready to make payment of ₹ 25 lacs but the auction purchaser failed to match the same. On 10.04.2015, the petitioner gave offer of ₹ 25.50 lacs. It was at this stage that the auction purchaser raised objection that the appeals were not maintainable on account of pre-deposit having not been made. It is accordingly argued that as the petitioner was allowed to bid by the DRAT and the auction purchaser initially did not raise any objection thereto, he should be taken to have waived his right to object to the offer of the petitioner. Now, after having initially permitted him to bid, was the DRAT justified in holding that the petitioner being a newly introduced person had no right to bid for the property.

Learned counsel for the auction purchaser on the other hand argued that the petitioner has no locus standi to challenge the order of DRAT passed in the appeal filed by borrower. He was only an intending purchaser introduced by the borrower at the appellate stage before the DRAT and was never a party to any proceedings either before the Recovery Officer or before the Tribunal or even before the DRAT. By mere participation in the proceedings and making an offer he does not get any vested right. He further argued that the property in question is under the ownership of the auction purchaser for the last more than 8 years since the confirmation of the auction in his favour on 01.04.2008. It has been mutated in his favour in the revenue records. He is regularly paying property tax and other taxes to the Municipal Corporation and has made improvements therein by spending a considerable amount. The property had been sold in the year 2007, the sale had attained finality on 01.04.2008, the same cannot be set aside on the mere asking of third person, who was not even a party to the proceedings. He argued that the Ld. DRAT has specifically observed that the borrower has misled the Tribunal to urge that he had a better buyer which led to inter-se bidding. Regarding his participation in inter-se bidding and not raising any objection earlier, learned counsel stated that the auction purchaser having bought the property in 2007 for an amount of ₹ 12.10 lacs and having incurred considerable expenditure in making improvement and having established his business thereon where he is currently running his factory could not have afforded to part with the possession of the property in question and thus had no option but to match bid submitted by the petitioner. He stated that contrary to the assertions of the petitioner, the auction purchaser had matched all his bids before raising objections to the entertainment of the appeal. He also argued that the writ petition filed by the borrower against the impugned order of the DRAT had already been dismissed by this Court vide judgment dated 25.02.2016 in CWP No.3777 of 2016 titled as 'Vijay Kumar Vs. State Bank of India and others'. The petitioner, who was introduced by the borrower at the appellate stage before the DRAT could not claim any better right than the borrower and this petition was also liable to be similarly dismissed.

Heard learned counsel for the parties and perused the record. We are of the view that there is no merit in the petition.

Hon'ble the Supreme Court has considered the circumstances in which an auction sale can be set aside in various cases.

In ***Valji Khimji's case*** *(supra)*, Hon'ble Supreme Court held that a confirmed sale cannot be set aside merely because somebody offers a higher amount subsequently. It was held that once a sale is confirmed by the authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

The relevant observations of the Supreme Court are as under:

"28. If it is held that every confirmed sale can be set aside the result would be that no auction-sale will ever be complete because always somebody can come after the auction or its confirmation offering a higher amount. It could have been a different matter if the auction

had been held without adequate publicity in well-known newspapers having wide circulation, but where the auction-sale was done after wide publicity, then setting aside the sale after its confirmation will create huge problems. When an auction-sale is advertised in well-known newspapers having wide circulation, all eligible persons can come and bid for the same, and they are themselves to be blamed if they do not come forward to bid at the time of the auction. They cannot ordinarily later on be allowed after the bidding (or confirmation) is over to offer a higher price. Of course, the situation may be different if an auction-sale is finalised, say for Rs 1 crore, and subsequently somebody turns up offering Rs 10 crores. In this situation it is possible to infer that there was some fraud because if somebody subsequently offers Rs 10 crores, then an inference can be drawn that an attempt had been made to acquire that property/asset at a grossly inadequate price. This situation itself may indicate fraud or some collusion. However, if the price offered after the auction is over which is only a little over the auction price, that cannot by itself suggest that any fraud has been done.

29. In the present case we are satisfied that there is no fraud in the auction-sale. It may be mentioned that auctions are of two types — (1) where the auction is not subject to subsequent confirmation, and (2) where the auction is subject to subsequent confirmation by some authority after the auction is held.

30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

31. In the present case, the auction having been confirmed on 30-7-2003 by the Court it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone in this case."

No irregularity in the auction has been pointed out by the Ld. Counsel for the petitioner and all the Forums below have concluded that the auction was conducted in a fair and transparent manner. The petitioner had been newly introduced as an intending buyer by the borrower before the DRAT. Before that, in his first application before the Recovery Officer, the borrower had offered to produce a better buyer for ₹ 21 lacs, but despite many opportunities did not make good his offer. He then moved another application more than a year after the auction to bring a buyer (Shivam Aggarwal) for ₹ 18 lacs but deposited only 25%

of the offered amount with the application. The Recovery Officer concluded that his intentions were not bonafide and dismissed the objections. The Tribunal dismissed the appeals of the borrower and Shivam Aggarwal. Before the DRAT the borrower initially candidly admitted that he had not been able to arrange a better buyer. But, later he introduced the father of Shivam Aggarwal who offered 10% more than ₹ 18 lacs and still later the petitioner whose bid of ₹ 25 lacs was matched by the auction purchaser in inter-se bidding. At that stage the auction purchaser objected to the very maintainability of the appeal without making the mandatory pre-deposit. Though the DRAT held that the appeal was not maintainable for want of the requisite pre-deposit, yet the DRAT considered the issue on merits and vide the impugned order dismissed the appeal of the borrower. It was held that the borrower could not introduce a new buyer at the appellate stage and that he had sustained the appeal primarily by misleading the Tribunal and introducing a person who was not before any of the fora below. Regarding the petitioner it was held that being a newly introduced intending purchaser he had no right to bid for the property.

The writ petition filed by the borrower has already been dismissed by this Court in Vijay Kumar's case (supra).

The petitioner cannot claim any better right than the borrower and this petition is thus also liable to be dismissed for the same reasons.

Further, we fully agree with the contentions of the Ld. Counsel for the auction purchaser that merely because the petitioner was permitted to bid by the DRAT to which the auction purchaser did not immediately object but chose to match the same, would not clothe him with any legal right. The DRAT has held that the borrower had sustained the appeal primarily by misleading the Tribunal and introducing a person who was not before any of the fora below.

In any event, the auction sale was confirmed on 01.04.2008. No irregularity regarding the same has been established. It cannot be set at nought at the instance of a total stranger offering a higher bid eight years thereafter.

Hence, this petition is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

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

Whether Reportable: Yes/No