

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

RSA-4953 of 2014 (O&M)
Date of decision: 29.09.2017

Didar Singh

.... Appellant

Versus

Executive Engineer, Shah Nehar Extention, Hoshairpur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Sarfraj Hussain, Advocate and
Mr.Shiva Khurmi, Advocate
for the appellant.

Avneesh Jhingan, J.

Appellant/plaintiff is in regular second appeal against the judgment and decree dated 23.05.2014, whereby the First Appellate Court dismissed the appeal upholding the impugned judgment and decree dated 18.12.2013 passed by the trial Court.

The facts necessary for the disposal of the present appeal, as noticed by learned First Appellate Court in para 2 of its impugned judgment, are that the appellant/plaintiff filed the main civil suit for declaration on the averments that respondents/defendants took land measuring 6 kanalas from Batan Singh father of appellant/plaintiff for construction of sheds/stores and then, they constructed three sheds thereon. On expiry of lease period, father of appellant/plaintiff filed suit for possession of said land by way of ejectment and same was decreed and the

respondents/defendants were ordered to deliver vacant possession of the said land. Then, said stores/shed were ordered to put in open auction by respondent/defendant No.2 vide auction, notice dated 02.10.2010, to be conducted on 25.10.2010. That auction notice was published in three leading newspapers and ultimately, auction was conducted on 30.11.2010 as it was not conducted on 25.10.2010 due to some administrative reasons. Before participating in auction proceedings, the bidders were required to deposit two bank drafts amounting to Rs.50,000/- and Rs.20,000/- respectively as security in favour of respondent/defendant No.1 and accordingly, appellant/plaintiff deposited the said amount. Total nine bidders had participated in auction, but appellant/plaintiff was the highest bidder and then, auction became final in his favour for Rs.50,100/- per shed. The reserve price/book value of sheds was fixed as Rs.46,000/- per shed as per Punjab Financial Rules. However, appellant/plaintiff was astonished to receive letter from respondents/defendants regarding cancellation of said auction proceedings, which became final in his favour on 30.11.2010. Appellant/plaintiff approached the respondents/defendants to make the auction proceedings absolute in his favour, but they refused to accede his requests. Hence, this suit.

The notice of the suit was issued for the service of defendants. Then, defendants appeared and contested the suit. They filed their written statement by taking preliminary objections to the effect that plaintiff has not given notice under Section 80 CPC. Plaintiff has no cause of action to file the present suit. On merits, taking of land on lease by defendants and

auction of stores/sheds thereon is admitted fact, but the auction proceedings could not approved due to administrative reasons. The plaintiff gave a bid of Rs.50,100/- per shed but as per rules, if the bid is for more than Rs.50,000/-, then it is to be approved by condemnation board. Accordingly, the plaintiff was informed vide letters dated 6.1.2011 and 3.2.2011 to collect the deposited amount from the office of Executive Engineer, SNE Mech. Division Hoshiarpur. The department is bound by the Govt. rules, regulations and instructions issued from time to time. The auction proceedings have been cancelled as per Govt. rules. While denying remaining averments of plaint, defendants prayed for the dismissal of the suit.

The appellant/plaintiff filed replication to the written statement, filed by defendants while reiterating the contents of plaint and denying those of written statement. Then, from the pleadings of the parties, the following issues were framed by the ld. Lower Court :-

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the injunction as prayed for? OPP
3. Whether the suit is not maintainable without notice under Section 80 CPC? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Relief.

The appellant/plaintiff Didar Singh, while leading evidence in order to prove said issues, himself stepped in the witness box as PW1. Then, the ld. Counsel for appellant/plaintiff closed evidence on behalf of appellant/plaintiff. On the other hand, respondents/defendants examined DW-1 Satnam Singh Sub Divisional Officer. Then, the ld.Govt. pleader closed evidence on behalf of respondents/defendants.

The ld. Lower court decided issues No.1 and 2 against appellant/plaintiff and issues No.3 and 4 in favour of appellant/plaintiff and dismissed the suit of the appellant/plaintiff.

The appellant/plaintiff felt aggrieved and filed the first appeal which was dismissed by the learned District Judge upholding the dismissal of the suit for declaration which was dismissed vide judgment and decree dated 18.12.2013.

Hence this regular second appeal at the hands of the appellant/plaintiff.

Heard learned counsel for the appellant.

The learned Courts below on an analysis of the matter in issue and the evidence on record in its entirety concurrently found that in a suit for declaration, no relief can be granted as value of the articles auctioned exceeds Rs.50,000/-. The same has to be condemned by Condemnation Board as per Punjab Financial Rules. The appellant has not been able to show that the order passed cancelling the auction was not in accordance with the Rules.

Only argument raised by learned counsel for the appellant is

that once auction was held and he was the highest bidder thereafter the auction cannot be cancelled and he becomes the owner of the auctioned goods. The argument raised by the appellant does not appeal to reasons. Even otherwise, the argument raised has no legs to stand in law also. The appellant being the highest bidder in itself will not make him the owner of the goods. The auction was conducted as per Punjab Financial Rules and is even admitted by the appellant that the reserved price of sheds were fixed at Rs.46,000/- per shed as per Punjab Financial Rules. The appellant has not disputed that as per Chapter 5 of the Punjab Financial Rules if the value of the condemned articles is more than Rs.50,000/- then the Condemnation Board established by the State Government under the Rules will deal with such goods. The appellant, on the one hand, is relying upon the auction held under the Rules and on the other hand, is taking the stand that the cancellation of the auction in compliance with the said Rules is bad.

The appellant has not contradicted that when his highest bid was sent for approval, at that stage it was noticed that the value of the goods exceeded Rs.50,000/- and approval of competent authority is required, then the auction was rejected vide Ex.D1.

The First Appellate Court arrived at a judicious conclusion after re-considering and re-appreciating the facts of the case as well as evidence available on record, in the right perspective. The cogent and well convincing findings recorded by learned first appellate Authority deserves to be noticed hereunder:-

“The contention of the ld. Counsel for the

appellant/plaintiff that appellant/plaintiff being highest bidder for the sheds in question has every right to claim the material thereof, especially when the auction has already become final in his favour, has no substance, as rules and regulations of the department provide that the highest bid is required to be confirmed by the higher authorities. Merely on account of raising highest bid, the appellant/plaintiff cannot claim right on the articles, against which, he has raised bid during the auction as per rules contained in Ex.D2. It has come in evidence led by the respondents/ defendants that as the cost of articles was more than Rs.50,000/-, the matter was referred to the competent authority for its approval, but the competent authority rejected the auction proceedings vide order Ex.D1 as the book value of articles exceeded Rs.50,000/- and for its auction, its approval was required. In these circumstances, appellant/plaintiff has not brought cogent and convincing evidence to refute the claim of respondents/defendants that in case the cost of articles exceeds Rs.50,000/-, then approval of competent authority is required. On the other

hand, this claim of respondents/defendants has been established by Satnam Singh Sub Divisional Officer, while stepping into witness box as DW-1 as his testimony is in accordance with the facts of the case well as rules and regulations of the department.”

At the time of the arguments the counsel was specifically asked that which of the questions raised in his regular second appeal he is pressing. The counsel stated that he is not pressing any of the four questions raised in regular second appeal but he is raising another question of law i.e.:-

Being a bona fide bidder and the highest bidder, the Rule regarding the power of Condemnation Board to auction the goods exceeding value Rs.50,000/- would not be applicable to him.

The counsel for the appellant has not refuted this specific pleading of the respondents that the appellant was informed vide letters dated 06.01.2011 and 03.02.2011 that he may collect the amount deposited by him from the office of Executive Engineer, SNE, Mechanical Division, Hoshiarpur. By this action of the respondents, it is clear that no prejudice was caused to the appellant by cancellation of the auction. Further, during the pendency of this regular second appeal, an application was moved for staying the re-auction. From the said application, it is evident that re-auction of the said sheds is to be done by the appropriate authority and the appellant can always participate in re-auction.

The above said argument has no merit. Highest bid has nothing to do with the jurisdiction of the authority for holding auction. The Rules have to prevail.

The Hon'ble Apex Court in **Desh Bandu Gupta vs. N.L.Anand & Rajinder Singh, (1994)1 SCC 131**, in paragraph 5 held as under:-

“The auction-purchaser gets a right only on confirmation of sale and till then his right is nebulous and has only right to consideration for confirmation of sale.”

As per the decision referred above, the appellant/plaintiff had only the right to be considered for confirmation of his bid. The cancellation of the auction as per the Rules will give him no cause of action to challenge the same.

Moreover during the course of hearing, the learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

The findings recorded by the First Appellate Court have been found factually correct and legally justified. Thus, no fault can be found with the impugned judgment passed by the First Appellate Court and same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case, coupled with the reasons mentioned above, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit, thus must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(AVNEESH JHINGAN)
JUDGE

29.09.2017
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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes