

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

APPEAL (Lodg.) NO. 31 OF 2019

in

CHAMBER SUMMONS (Lodg.) NO. 1 OF 2019

in

EXECUTION APPLICATION NO. 581 OF 2010

in

ARBITRATION PROCEEDING NO. 1 OF 2006

Swarup Group of Industries & Anr.

... Appellants.

(Orig. Defendants)

V/s.

(1) National Agricultural Co-operative

Marketing Federation of India Ltd. (NAFED) ... Respondents.

(Orig. Plaintiff)

(2) Silver Moon Construction Pvt. Ltd.

... Intervener

Mr. A.V. Anturkar, Senior Advocate a/w. Mr. Mohit Choudhary, Ms. Kainaz Irani, Mr. Prasad Das I/b. Das Associates for the Appellants.

Mr. Aditya Vijyakumar I/b. Shashipal Shankar for Respondent 1.

Mr. D.V. Deokar a/w. Mr. Pinakin Modi & Mr. D. Parikh I/b.

Parimal K. Shroff & Co. for Respondent 2.

Mr. Satish D. Chitgopekar, Deputy Sheriff of Mumbai present.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 23 JANUARY, 2019.

P.C. :-

The Appellant – the Judgment Debtor has assailed the order passed by the learned Single Judge dated 11 January 2019 permitting the Sheriff of Mumbai to proceed with the conduct of auction sale of the properties.

2. Execution Application No. 581 of 2010 is filed by the Claimants for execution of the Arbitration Award. In this Execution Application the Judgment Debtor had earlier taken out a Chamber Summons in which orders were passed on 18 June 2018 and 6 August 2018 by the learned Single Judge. The orders were confirmed by the Appeal Bench by order dated 13 August 2018. Thereafter, the Court appointed Valuer submitted his report and valued the property in question at Rs.66 crores. In view of this Valuation Report, the learned Single Judge by the impugned order directed the Deputy Sheriff of Mumbai to finalize the formalities of the auction.

3. We have heard the learned Counsel for the parties.

4. The learned Senior Advocate for the Appellant contended that the learned Single Judge was not right in holding that nothing remained to be adjudicated in respect of the valuation

in view of the orders passed on 18 June 2018 and 6 August 2018 and that these orders were confirmed in Appeal. He submitted that even assuming the contention of the Appellant based on the valuation made by the Central Bank of India of the property being Rs.190 crores to Rs.200 crores was to be kept aside, the Appellant should have been given an opportunity to dispute the valuation which was till then kept in a sealed cover.

5. We do not find merit in this contention. The order dated 6 August 2018 squarely rejects the contentions of the Appellant that the property was worth Rs.200 crores and the learned Single Judge further notes that the valuation was needed from the Panel Valuer, which report was in the sealed cover. The Appeal memo of the Appeal No. 365 of 2018 is on record. In this Appeal the order dated 6 August 2018 was challenged. The grounds taken in the Appeal Memo shows that the challenge was also to the observations made while refusing the argument of the Appellant of the valuation to be around Rs.200 crores. This Appeal was dismissed by the Division Bench on 13 August 2018. Therefore, there was no error in holding that the valuation will have to be proceeded on the basis of the Court appointed valuer.

6. On the merits of the valuation, the Appellant had in the affidavit-in-support of the Chamber Summons has only referred to

the other Valuers to contend that the valuation of the Court appointed Valuer should not be accepted. These valuations are from the year 2011 to 2015. The learned Single Judge was therefore right in holding that the report of the Court appointed Valuer is recent. Nothing is shown as to how the Court appointed Valuer has adopted any erroneous method. The Valuation Report is on record. Perusal shows that the Valuer has taken the necessary relevant criterias into consideration.

7. The learned Counsel for the Respondent made a grievance that there are three Arbitration Awards against the Appellant totaling the amount of Rs.200 crores and at every stage an attempt is made to delay the execution proceedings. The Respondent – Claimant has already paid a substantial amount for arranging the auction and all the preparations for the auction have been made. Even otherwise the valuation will only indicate the reserved price and there will be an open bidding.

8. Considering these circumstances, there is no reason to interfere in the impugned order. The Appeal is dismissed.

N.M. JAMDAR, J.

CHIEF JUSTICE