

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.143 OF 2019
IN
SUIT NO.1246 OF 2018**

Meena Harikishan Tawrani and Anr.Plaintiffs

Vs.

Suchit Developers and Ors.Defendants

Ms. Neeta Kamlakar Satghare, offeror present.

Mr. Mohd. Sharif A.R. Kazi, offeror present.

Mr. Abdul Mannan Sohabat Ali Khan, offeror present.

Mr. P.K. Nardele, O.S.D. from Court Receiver office present.

Mr. A.B. Malvankar, Section Officer, Court Receiver office present.

Mr. Rohan Mahadik a/w. Ms. Roshni M. Thakkar i/b. The Juris Partners for defendant nos.2 and 3 in CRR/143/2019.

Mr. Ashwin Shete a/w. Mr. Neel Kothari i/b. M/s. Jayakar and Partners for defendant no.4.

Ms. Gulnar A. Mistry a/w. Mr. Vishesh Kalra i/b. Vidhii Partners for defendant no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 9th AUGUST 2019

P.C.:

1 Court Receiver's Report is placed regarding the attempt to sell four shops, i.e., shop no.9 and shop no.10 in Aryan Towers and shop no.8 and shop no.9 in Viraj Apartment.

2 The Court Receiver conducted preliminaries as required following the order dated 26th July 2018. The Court Receiver has received no offer for shop no.10 in Aryan Towers whereas three persons, who participated in the meeting held on 20th July 2019, gave the following offers. Mr. Abdul Mannan Sohabat Ali Khan offered Rs.35 lakhs for shop no.9 in

Aryan Towers, Ms. Neeta Kamlakar Satghare offered Rs.12 lakhs for shop no.8 in Viraj Apartment and Mr. Mohd. Sharif A.R. Kazi offered Rs.33 lakhs for shop no.9 in Viraj Apartment. As noted earlier, no offer was received for shop no.10 in Aryan Towers.

3 Before considering the offers, this Court opened the sealed envelope in which the valuation report of M/s. Shrinivas Kini and Company dated 4th January 2019 was placed and considered the valuation. At this stage, Mr. Mahadik, appearing for defendant nos.2 and 3 stated that he has a prospective buyer one Kamlesh Ranka who is willing to buy all the four properties and tendered a letter dated 25th July 2019 addressed by Kamlesh Ranka to defendant nos.2 and 3, who are partners of defendant no.1. The said letter is taken on record and marked "X" for identification.

4 At the outset, it was made clear to Mr. Mahadik that even if the Court rejects the offer of Mr. Kamlesh Ranka, he shall before 4.30 p.m. today hand over a pay order for Rs.40 lakhs being EMD of Rs.10 lakhs for each of the premises. It was also made clear that if Mr. Kamlesh Ranka is unsuccessful in his bids for all the four premises or some of them, EMD regarding those premises will be returned to him only after one month. It was also made clear that if this EMD is not given, the Court will hold Mr. Kamlesh Ranka guilty of interfering with administration of justice and punish him in accordance with law without any further hearing.

5 Mr. Mahadik and Mr. Kamlesh Ranka, who understand English, were in total agreement with the pre-conditions of the Court and Mr. Kamlesh Ranka handed over his Aadhar Card to Mr. Nardele, OSD in the office of the Court Receiver.

6 In view of this acceptance of the conditions, the Court considered the offer made by Mr. Kamlesh Ranka in his letter dated 25th July 2019 addressed to defendant nos.2 and 3.

7 For the three properties, i.e., Viraj Apartment shop no.8 and shop no.9 and Aryan Towers shop no.9, for which the three other individuals had made an offer, the Court gave them an opportunity to improve their offer and give an offer more than what Mr. Kamlesh Ranka has given. For shop no.9 in Aryan Towers, for which Mr. Abdul Mannan Sohabat Ali Khan has offered Rs.35 lakhs, Mr. Kamlesh Ranka has offered Rs.62 lakhs. Mr. Abdul Mannan Sohabat Ali Khan expressed his inability to give any amount beyond Rs.62 lakhs and Mr. Kamlesh Ranka also did not increase on his offer.

8 As regards shop nos.8 and 9 in Viraj Apartment, Ms. Neeta Kamlakar Satghare and Mr. Mohd. Sharif A.R. Kazi were informed that Mr. Kamlesh Ranka has offered Rs.46 lakhs and Rs.51 lakhs, respectively but they also expressed their inability to give a better offer. For shop no.10 in Aryan Towers, for which no offer has been received, Mr. Kamlesh Ranka has

offered to pay Rs.1 Crore. The others present were not inclined to make a bid for this shop no.10.

9 Now coming to issue whether Kamlesh Ranka's offer has to be accepted, as regards shop nos.8 and 9 in Viraj Apartment, the offer received from Mr. Kamlesh Ranka is way below the fair market value indicated by the Valuer. I am not inclined to accept this offer and I shall not disclose what the fair value is but suffice to say the offer is way below. Therefore, the offer of Mr. Kamlesh Ranka regarding Viraj Apartment - shop nos.8 and 9 is rejected.

10 Coming to shop no.9 and shop no.10 in Aryan Towers, I am inclined to accept the offer made by Mr. Kamlesh Ranka subject to Mr. Kamlesh Ranka paying the EMD during the course of today and the balance amount as per the terms and conditions of sale fixed by the Court Receiver.

11 Though the offer made by Mr. Kamlesh Ranka for shop nos.9 and 10 in Aryan Towers is below the fair market value indicated, the difference for shop no.9 is hardly 5% less and for shop no.10 just about 18% less.

12 In the circumstances, as observed by the Apex Court in ***Kayjay Industries V/s. Asnew Drums***¹ if court sales are too frequently adjourned with a view to obtaining a higher price, it may prove a self defeating

1. (1974) 2 SCC 213

exercise. It will be useful to reproduce paragraph 7 as under :-

“Certain salient facts may be highlighted in this context. A court sale is a forced sale and, notwithstanding the competitive element of a public auction, the best price is not often forthcoming. The judge must make a certain margin for this factor. A valuer's report, good as a basis, is not as good as an actual offer and variations within limits between such an estimate, however careful, and real bids by seasoned businessmen before the auctioneer are quite on the cards. More so when the subject matter is a specialised industrial plant, which has been out of commission for a few years, as in this case, and buyers for cash are bound to be limited. The brooding fear of something out of the imported machinery going out of gear; the vague apprehensions of possible claims by the Dena Bank which had a huge claim and was not a party, and the litigious sequel at the judgmentdebtor's instance, have 'scare' value in inhibiting intending buyers from coming forward with the best offers. Businessmen make uncanny calculations before striking a bargain and that circumstance must enter the judicial verdict before deciding whether a better price could be had by a postponement of the sale. Indeed, in the present case, the executing Court had admittedly declined to affirm the highest bids made on May 16, 1969, June 5, 1969 and August 28, 1969, its anxiety to secure a better price being the main reason. If court sales are too frequently adjourned with a view to obtaining a still higher price it may prove a self defeating exercise, for industrialists will lose faith in the actual sale taking place and may not care to travel up to the place of auction being uncertain that the sale would at all go through. The judgmentdebtor's plea for postponement in the expectation of a higher price in the future may strain the credibility of the Court sale itself and may yield diminishing returns as was proved in this very case.”

13 The counsel also informed that there are still disputes regarding these premises with Slum Rehabilitation Authority and occupation certificate also is yet to be received. Keeping these factors also in mind and also considering the market situation that there are lot of premises available and buyers are less, I accepted the offer for shop nos.9 and 10 in Aryan Towers.

14 As regards shop no.8 and shop no.9 in Viraj Apartment, the Court Receiver to take fresh steps to auction the two premises.

15 The valuation report will be valid for six months from today. The Court Receiver to place the valuation report in an envelope and seal the same. The same shall not be shown to anyone or shared with anyone without leave of this Court.

16 As regards the EMD given by the other three, viz., Ms. Neeta Kamlakar Satghare, Mr. Mohd. Sharif A.R. Kazi and Mr. Abdul Mannan Sohabat Ali Khan, those EMD's to be returned. The EMD's regarding shop nos.8 and 9 in Viraj Apartment, which Mr. Kamlesh Ranka undertakes will be handed over to the Court Receiver on or before 4.30 p.m. today, will be returned to Mr. Kamlesh Ranka not before 7th September 2019.

17 The Court Receiver's Report accordingly stands disposed including prayer clause – (c).

(K.R. SHRIRAM, J.)