

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2020

CORAM

THE HON'BLE MR.JUSTICE **M.M.SUNDRESH**
and
THE HON'BLE MRS.JUSTICE **R.HEMALATHA**

Review Application No. 66 of 2020
and W.M.P.Nos.16666 and 16668 of 2020

Ramasamy Krishnamoorthy .. Petitioner

vs

1.M/s.SubaGanesa Spintex Limited
Liability Partnership,
Rep. by its First Partner P.K.Ganeshwar,
No.21 A2, Pollachi Road,
Palladam – 641 664.

2.The Authorized Officer,
J.M.Financial Asset Reconstruction
Company Ltd.,
No.40/1A, 4th Floor, Basappa Complex,
Lavella Road, Bangalore – 560 001.

3.The General Manager,
Andhra Bank,
Coimbatore Main Branch,
No.17, Mill Road, Coimbatore – 640 001.

4.M/s.VTX Industries Ltd. (In Liquidation)
Through Official Liquidator
Office of the Official Liquidator
Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai – 600 001.
Also at No.10/400, Palaghat Road,
Guniamuthur, Coimbatore.

5.M/s.Feshraj Enterprises Pvt. Ltd.,
Palaghat Road, Guniamuthur,
Coimbatore.

6.M/s.Lakshmi Apparels and Wovens Ltd.,
(In Liquidation),
Through M.Suresh Kumar, FCA,
M/s.STT & Co,
Chartered Accountants,
No.27/9, Pankaja Mill Road,
Puliankulam, Coimbatore – 640 045. .. Respondents

Petition under Order XLVII Rule 1 r/w Section 114 of CPC
against the order dated 14.08.2020 passed in W.P.No. 10098 of 2020.

For Petitioner .. Mr.Akhil Bhansali

For Respondents .. Mr.Srinath Sridevan for R2
Mr.Balaji Thiagarajan

ORDER

(Order of the Court was made by *M.M.SUNDRESH, J.*)

Seeking to review the order passed by us on 14.08.2020, the
present Review Application has been filed by the petitioner, who was
the highest bidder at the relevant point of time.

2.The first respondent/writ petitioner approached this Court on
the premise that he is ready and willing to increase the offer made by

the petitioner before us. We have considered the stand taken by the third respondent/Bank while passing our earlier order which is sought to be reviewed. After all, as rightly pointed out on behalf of the Bank by the learned counsel, it is interested in getting the highest revenue. Admittedly, no auction was conducted but a private treaty was entered into. It appears that the writ petitioner was the erstwhile partner of the petitioner before us. We do not wish to go into the said realm of controversy between the private parties. What is required to be seen is the compliance on the part of the writ petitioner/first respondent.

3. Learned counsel appearing for the petitioner submitted that the order has not been complied with. We do not think so. Though we have not clearly spelt out that the undertaking will have to be complied with, it is obviously from the date on which the order was made ready. Admittedly, the writ petitioner has complied with the order as stated not only by the learned counsel appearing for the petitioner but also by the learned counsel appearing for the third respondent/Bank within the time granted, which we reckon the same from the date of the order copy having been uploaded. In such view of the matter, we do not find any merit in the submission made with

respect to the non-compliance of the order and the consequence that would emanate thereon.

4. Learned counsel appearing for the petitioner raised two more contentions. One is with respect to the maintainability on the ground that the writ petitioner ought to have approached the Tribunal and the other is with respect to the right created in favour of the petitioner. Both these grounds, in our considered view, cannot be sustained in the eye of law. In the earlier order, we have taken into consideration the fact that it is the private treaty and the sale has not been confirmed. Obviously, as stated earlier, the Bank is interested in the higher offer made at the relevant point of time and even now, the sale has not been confirmed in favour of the petitioner. Therefore, it is only an invitation by the Bank at the relevant point of time and what the petitioner before this Court made is an offer. Unless and until there is a confirmation, there is no question of acceptance. To put it differently, even without approaching this Court, the power is always available with the third respondent/Bank to decline confirmation. Therefore, in the absence of any concluded contract, the petitioner cannot be permitted to contend otherwise. The reliance made upon the communication of the third respondent/Bank to the petitioner

cannot be construed as a final settlement of acceptance. Till the petitioner makes the payment, the stage is one of the agreement and, therefore, no conclusion takes place. Therefore, even the word used as confirmed will not give any right to the petitioner.

5. It is apposite to refer the following passage in 1943 MLJ 132 dated 27.03.1922, Joravamull Champalal v. Jeygopaldas Ghanshamdas and others:-

"All we are concerned with in this case is to determine whether the bid in auction is to be regarded as the acceptance of the general offer made by the auctioneer, as Mr.Krishnaswami Ayyar would have it, or whether it is merely an offer which it is for the auctioneer as the agent of the vendor, to accept by knocking the property down. It seems to us that the very word "bid" or "bidder" is indicative of a personal who is making an offer rather than concluding an arrangement. But apart from that, we think it is quite clear that to take any other view leads to such a complexity of artificial reasoning that it is clearly indicative that the conclusion is not sound. Mr.Krishnaswami Ayyar was faced with this difficulty, that if I bid Rs.20 and that is called an acceptance and a contract and if another man bids Rs.25 the next moment it is another acceptance and another contract,

and he had to admit that on this tortuous reasoning it is a contract subject to the condition that what is a good contract at one moment becomes entirely void immediately after. Taking what is to our mind, the plain common-sense view, we think that a person who bids at an auction thereby does not conclude a contract but states an offer by which, until he withdraws it himself, he may be liable for the amount of his bid. But on the other hand we think that like all other offers it is subject to the ordinary incidents of law that, until it is accepted it is open to the offeror to withdraw it and render it as if it had not been made."

6. Similarly, we have rightly exercised the power conferred under Article 226 of the Constitution of India on the given facts and, therefore, the question of maintainability would not arise as the writ petitioner does not challenge any proceeding but only sought for an opportunity to match the bid amount offered by the petitioner before us.

7. We may note, the result of the order is to permit both the petitioner and the contesting respondent/writ petitioner to offer their bids before the third respondent/Bank. In paragraph 4 of the order passed, we have made it clear that the highest bidder will be declared

as successful bidder. Therefore, we do not find any reason to accept the contention of the petitioner as his rights are not totally destroyed. It is well open to him to participate in the bid to be conducted between himself and the writ petitioner and if he becomes the successful bidder as against other person, certainly in tune with the order passed, the sale will have to be confirmed followed by formalities subject to the compliance to be made by him. Incidentally, no sale certificate has been issued and registered resulting in a concluded contract. Therefore, looking from any perspective, we do not find any reason to review the order passed.

8. Learned counsel appearing for the second respondent submitted that the proposed auction is to be held at 12.00 noon (today). In view of the same, we direct the third respondent/Bank to conduct the same at 2.15 p.m. today as the petitioner may not have sufficient time to upload his bid document. Needless to state that the third respondent/Bank is expected to confirm the highest bid offered among the petitioner and the writ petitioner particularly, in view of the statement made by the learned counsel that the same would be done accordingly.

9. In the event of any one of them not participating as aforesaid, and when the auction is confirmed in favour of the other party, the person who has not participated or who was not able to match the bid amount of the other is entitled for refund of the amount deposited.

10. For the foregoing reasons, the review application stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(M.M.S., J.) (R.H., J.)
22.09.2020

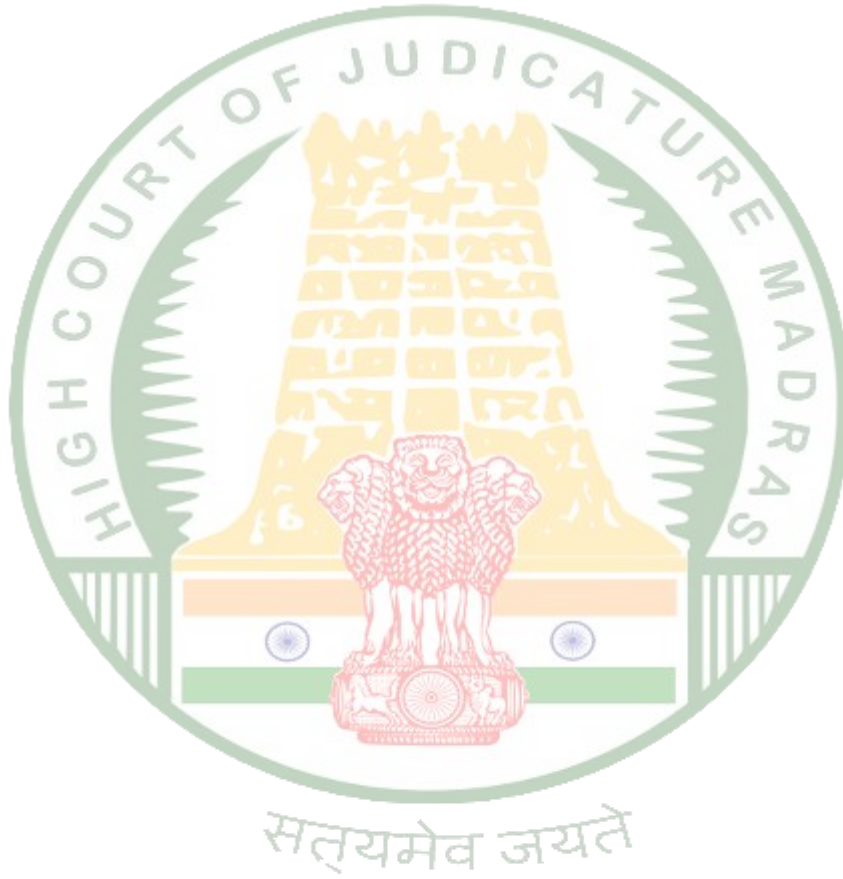
Index:Yes/No
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To

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**M.M.SUNDRESH, J.
and
R.HEMALATHA, J.**

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