IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P.Nos.1341 and 1375 of 2020
and C.M.P.No.7371 of 2020

M/s.Vantage Resorts & Clubs Pvt. Ltd., Rep. by its Director, Mr.Senthil Nathan,
No.89, Santhome High Road,
Chennai 600 028. .. Petitioner in CRP.1341/2020 and 1st Resdt. in CRP 1375/2020

Vs.

1.M/s.Vinplex India Pvt. Ltd.,
Rep. by its Director, Mr.K.R.Rangarajan,
No.1-B, Gleneden Place,
Old No.813, New No.310,
P.H.Road, Kilpauk, Chennai 600 010. .. 1st Resdt. in CRP.1341/2020 and Petitioner in CRP.1375/2020

2.The Authorised Officer,
Andhra Bank, Anna Nagar Branch,
Old No.995, JA/New No.170,
2nd Avenue, Anna Nagar,
Chennai 600 040.

3.M/s.Skyscape Properties Pvt. Ltd.,
Rep. by Mr.Sharat Kakumanu,
Managing Director.

4.Sharat Kakumanu
5.Sheela K.Sarat
6.Manpreet Chadha
7.Nisha Kakamanu Chadha
8.T.S.Shanthi .. Respondents 2 to 8 in both CRPs.

Prayer in CRP.No.1341 of 2020: Petitions filed under Article 227 of the Constitution of India against the order dated 12.03.2020 passed in R.A. (S.A.) No.107 of 2017 in S.A.No.5 of 2013 on the file of Debts Recovery Appellate Tribunal, Chennai.

Prayer in CRP.No.1375 of 2020:

Petitions filed under Article 227 of the Constitution of India against the order dated 12.03.2020 passed in R.A. (S.A.) No.107 of 2017 in S.A.No.5 of 2013 on the file of Debts Recovery Appellate Tribunal, Chennai, as invalid in law and consequently directing the 2nd respondent to pay to the petitioner the stamp duty, Registration charges expenses and interest on the same by allowing the Present Revision Petition CRP.1375/2020.

For Petitioner in CRP.1341/2020 and 1st respondent in CRP.1375/2020	:	Ms.J.B.Abitha Banu
For 1st Respondent in CRP 1341/2020 and for Petitioner in CRP.1375/2020	:	Mr.P.B.Sampath Kumar
For R2	:	Ms.Jayachithra for Mr.G.V.Anjaneya Babu for R-2
	:	No appearance for RR 3 to 8

* * * * *

COMMON ORDER
(Made by the Hon'ble Chief Justice)

These matters bring out a comedy of errors on all sides and the unprofessional manner in which the litigation is conducted for most parts.

2. There are two petitions. C.R.P.No.1341 of 2020 is by a company that had obtained credit facilities from the then Andhra Bank, which has now merged into the Union Bank of India. C.R.P.No.1375 of 2020 has been brought by the auction-purchaser of an immovable property after suffering an order undoing the sale in its favour.

3. The secured creditor exercised its authority under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to put up the secured asset for sale. At the auction that was concluded prior to November, 2012, Vinplex India Pvt. Ltd (the petitioner in C.R.P.No.1375 of 2020) was identified as the highest bidder and

such party duly put in the consideration to be entitled to the sale being confirmed in its favour. However, before the sale could be confirmed in favour of the auction-purchaser, borrower Vantage Resorts and Clubs Pvt. Ltd (the petitioner in C.R.P.No.1341 of 2020) approached the relevant Debts Recovery Tribunal to challenge the sale. On November 27, 2012 a conditional order was passed by the DRT and the borrower was directed to deposit Rs.1 crore with the secured creditor within 30 days. The order dated November 27, 2012 also provided as follows: "If the applicant (the petitioner in C.R.P.No.1341 of 2021 herein) fails to deposit Rs.1 crore on or before 26.12.2012 with the respondent bank as directed herein above, the respondent bank is at liberty to confirm the sale on 27.12.2012".

4. The borrower failed to make the initial deposit of Rs.1 crore by December 26, 2012. In terms of the liberty granted by the order dated November 27, 2012, the bank confirmed the sale in favour of the auction-purchaser on December 27, 2012 and the registration of the sale certificate was concluded by January 2, 2013.

5. The borrower then approached the DRT with an ex parte application on January 4, 2013 and the DRT passed an order extending the time to make the payment till such date. The payment was apparently tendered thereupon and the bank was forwarded a copy of the ex parte application for extension with the extension order of January 4, 2013 passed by the DRT endorsed therein.

6. Subsequently, the DRT passed an order setting aside the sale and the borrower paid off the bank's dues. The order setting aside the sale of the property appears to have been challenged, but the Debt Recovery Appellate Tribunal merely directed refund of the consideration tendered by the auction-purchaser.

7. The auction-purchaser applied before the Appellate Tribunal for refund of the stamp duty expenses incurred in course of the registration of the sale and indicated that a sum of Rs.22 lakh had been spent in such regard. Even while the relevant application for refund of the stamp duty component, together with interest thereon, was pending before the Appellate Tribunal, the auction-purchaser came to this court by way of a petition under Article 226 of the Constitution, seeking appropriate orders on the bank to comply with the DRAT order and refund the consideration along with interest. Such writ petition has been disposed of by this court and the amount of consideration tendered together with interest thereon have been recovered by the auction-purchaser.

8. The DRAT, thereafter, took up the auction-purchaser's application for refund of the stamp duty and, by the order impugned dated March 12, 2020 directed the bank to pay Rs.11 lakh, amounting to approximately half of the stamp duty, and permitted the bank to recover such amount from the borrower within two months from the date of the order failing which the borrower would be liable to pay interest at the rate of 9% per annum simple on the amount.

9. It is such order of March 12, 2020 which has been challenged in both sets of petitions taken up for consideration: by the borrower on the ground that the bank was at fault in rushing through with the confirmation of sale and registering the sale; and, by the auction-purchaser for the full compliment spent on account of stamp duty not being directed to be refunded and no interest being allowed.

10. The bank refers to a receipt dated June 2, 2020 issued by the auction-purchaser. The receipt states as follows:

> "RECEIPT
>
> Received with thanks a sum of Rs.11,00,000 (Rupees Eleven Lakhs Only) dated 02.06.2020 from Andhra Bank, Anna Nagar Branch, Chennai as per The Debt Recovery Appellate Tribunal order dated 12th March 2020."

11. An authorised signatory of the auction-purchaser issued the receipt and it also carries the particulars of the instruments of payment recorded in hand. According to the bank, there has been complete accord and satisfaction upon the bank tendering the money in terms of the order dated March 12, 2020 passed by the appellate tribunal and the auction-purchaser accepting the same without any reservation. The bank also points out that the petition under Article 227 of the Constitution was filed by the auction-purchaser more than a month after issuing the said receipt of June 2, 2020. The bank submits that upon the auction-purchaser accepting the order and issuing the said receipt, the auction-purchaser had no further right to complain against the relevant order or to challenge the same in any manner whatsoever.

12. The borrower, on the other hand, asserts that in terms of the order dated November 27, 2012 the borrower was required to deposit a sum of Rs.1 crore within 30 days of the order, but the borrower was also required to make further payments till the end of February, 2013. According to the borrower, there was a marginal delay on its part in tendering the initial deposit of Rs.1 crore and it was reckless on the part of the bank to confirm the sale one day after the 30-day period expired and complete the registration of the sale within the next four days.

13. As far as the auction-purchaser is concerned, there does not appear to be any doubt that the auction-purchaser has accepted the order dated March 12, 2020 and has completely discharged the bank by issuing the said receipt upon receiving the payment in terms of the relevant order. The auction-purchaser could have preserved its right to pursue its balance claim if the receipt had been issued without prejudice or if it had been issued subject to the auction-purchaser's right to challenge the order. In such receipt being unconditionally and unreservedly issued, it was not open to the auction-purchaser to challenge the order dated March 12, 2020 thereafter.

14. As far as the borrower is concerned, the fault was squarely the borrower's in not complying with the condition imposed by the order dated November 27, 2012 or even obtaining an extension of the time to comply with such condition before the expiry of the time. Indeed, the order dated November 27, 2012 expressly granted leave to the bank to confirm the sale on November 27, 2012 and the bank cannot be faulted on such count. That the registration of the sale was completed in a hurry may appear to be somewhat suspicious, but there was no law that stopped the registration being completed and the transfer was complete before the borrower obtained the subsequent order of extension on January 4, 2013. Accordingly, it is found that there was no fault on the part of the bank in confirming the sale which was subsequently undone.

15. In the light of the above, it is the borrower who has to bear the burden of stamp duty and, indeed, if the auction-purchaser had not foolishly issued the receipt of June 2, 2020, the auction-purchaser would have been entitled to the balance amount spent on account of stamp duty and even such liability would have had to be discharged by the borrower. However, the auction-purchaser is not entitled to the balance amount by reason of its conduct; but the borrower has to bear the payment made by the auction-purchaser on account of stamp duty in terms of the order dated March 12, 2020, which, in the circumstances, does not call for any interference.

16. C.R.P.Nos.1341 and 1375 of 2020 are dismissed. The bank will be entitled to further costs from the borrower for the present proceedings, assessed at Rs.25,000/-. Consequently, C.M.P.No.7371 of 2020 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra

To:

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Registrar,
Debts Recovery Tribunal-I,
Chennai.

3.The Authorised Officer,
Andhra Bank, Anna Nagar Branch
Old No:995, JA/New No.170,
2nd Avenue, Anna Nagar,
Chennai-600 040.

+1cc to Mr.Sampathkumar, Advocate, S.R.No.38693
+2cc to Mr.G.V.Anjaneya Babu, Advocate, S.R.No.38695

C.R.P.Nos.1341 and 1375 of 2020

MG(CO)
CB(10/08/2021)