

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 49 OF 2020

Tourism Finance Corporation of India Ltd. ...Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Dhrutiman Joshi a/w Ms. Yasmin Sabir a/w Mr. Siddharth Srivastava i/b Link Legal, for the Appellant.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

Mr. Aditya Thakkar a/w Mr. Deepak Shukla i/b Mr. Dayanandan, for the Respondent No.2.

PI Amrut Pawar, EOW-8, Mumbai.

Mr. A.K. Nilesh Madavi, Collector Office, Mumbai.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 23rd JUNE, 2023

P.C. :

1. By this appeal, the appellant has essentially impugned the order dated 26th April, 2019 as well as the order dated 6th November,

2019 passed by the learned Special Judge (MPID Court) in Miscellaneous Application No. 886 of 2018 in MPID Case No.18 of 2005 and Miscellaneous Application no. 1288 of 2019 in in Miscellaneous Application No. 886 of 2018 in MPID Case No.18 of 2005 respectively. Rest of the prayers are not pressed by the learned Counsel for the appellant and therefore, the question of examining the said prayer does not arise.

2. Perused the papers. It appears that the appellant had filed a Miscellaneous Application being M.A.No. 886 of 2018 in the MPID Case No. 18 of 2005 before the learned Special Judge (MPID Court) seeking permission to sell the immovable property i.e. Lords Club (also known as Hotel Shining Star), Mount Rose Estate, Camels Back Road, Mussoorie, Uttarakhand State.

3. The Learned Special Judge, vide order dated 26th April, 2019 allowed the said application preferred by the applicant. The operative part of the order dated **26th April, 2019**, reads thus;

“1. Application is allowed.

2. Applicant is permitted to sale the property i.e. Lords Club (also known as Hotel Shining Star), Mount Rose Estate, Camels Back Road, Mussoorie, Uttarakhand State on following conditions;

i) Applicant shall sale the above property to the proposed purchaser or any other person but not below Rs.7.50 Crores within 6 months from the date of this order, failing which, permission granted shall deem to be rejected.

ii) Applicant shall file on record photocopies of registered Sale Deed.

iii) Applicant shall deposit the entire sale proceeds in the Court.

3. Entitlement of sale proceeds shall be decided by the Court at appropriate stage.”

4. Since the sale could not be done within six months, it appears that the appellant filed a Miscellaneous Application being M.A.No.1288 of 2019 in Miscellaneous Application No. 886 of 2018 in MPID Case No. 18 of 2005 and sought modification of the order dated 26th April, 2019. The learned Special Judge (MPID), vide order dated **6th November, 2019** was pleased to partly allow the said application. The operative part of the said order reads thus;

- “1. The petition is partly allowed.*
- 2. The time for conducting sale of property in question is extended by two months as a last chance, failing which, the permission granted shall stand revoked.*
- 3. The other prayers made in the application are rejected.”*

5. It is not in dispute that during the said period and the extended period, the sale of the property was not done and as stated in the order dated 6th November, 2019, the permission to sell stood revoked.

6. Learned Counsel for the appellant states that the appellant be permitted to file a fresh application before the learned Special Judge seeking the very same relief i.e. for sale of the property, in question, and other incidental prayers.

7. Learned APP, on instructions, states that the State has no objection if a fresh application is filed by the appellant seeking the very same prayers.

8. Considering that the permission granted by the MPID

Court stands revoked in January, 2020, in view of the order dated 6th November, 2019, for failure to conduct sale of the property, we permit the appellant to file a fresh application before the Trial Court for sale of the property, in question, and for other incidental prayers thereto.

9. If such an application is filed by the appellant, the learned Judge to decide the said application, as expeditiously as possible and in any event, within eight weeks from the date of filing of the said application.

10. The Learned Special Judge (MPID) to decide the said application if filed by the appellant, on its own merits, uninfluenced by its earlier order dated 26th April, 2019 and 6th November, 2019.

11. The Appeal is accordingly disposed of on the aforesaid terms.

12. All contentions of all parties, on merits, are kept open.

13. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.