



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 116/2023

Date of Decision: 24.05.2023

IN THE MATTER OF:

PANKAJ JAIN

..... Appellant

Through: Dr.Amit George, Mr.Praveen
K.Chauhan, Mr.Raya Durgam Bharat,
Mr.Piyo Harold Jaimon and Mr.Amol
Acharya, Advocates.

versus

BAKSHI TEJESWAR SINGH & ANR

..... Respondents

Through: Sh.Bakshi Tejeswar Singh,
respondent No.1 in person.
Ms.Deepika V.Marwaha, Sr.Advocate
with Ms.Meghna Katari, Mr.Alok
Pandey, Ms.Krati Somvanshi and
Ms.Raunika Johar, Advocates for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM.APPL No. 24079/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.



FAO No.116/2023 & CM. APPL. No. 24080/2023

1. By way of present appeal filed under Order XLIII CPC, the appellant seeks to assail the order dated 11.04.2023 passed by the learned Trial Court in Execution Petition No.23555/2016 whereby the Objections filed by the appellant under Order XXI Rule 90 CPC challenging the sale of property, put up for auction pursuant to the order passed by the execution court below was dismissed.
2. The said Execution Petition was filed to execute judgment and decree dated 01.02.2012 passed in Civil Suit bearing No.41/2010. The decree passed was a money decree for a sum of Rs 6,25,000/ alongwith 12 % interest w.e.f. 22.12.2010 till realization, the execution of which was sought. The record reveals that execution court ordered sale of property bearing Nos.707-708, Double Storey, New Rajinder Nagar, Delhi -110006 i.e., the property held by JD by way of an auction. A Court Auctioneer was appointed, who issued a sale proclamation dated 29.08.2022 laying down conditions for sale. The reserved price of the suit property was fixed at Rs.1,45,28,751.70. Auction was conducted on 09.09.2022.
3. Respondent No.2 was one of participants in the auction and turned out to be the highest bidder with the offer of Rs 2.80 crores-which is stated to be lying deposited in the Execution Petition. Sale Deed has yet not been executed in favour of the respondent No 2, apparently, due to Objections filed by the appellant, challenging the sale.
4. The auction proceedings came to be challenged by the appellant as well as one *Jyoti Gupta* under Order XXI Rule 90 CPC. Vide impugned order, both sets of the Objections were dismissed. While *Jyoti Gupta* has not



challenged the impugned order, the appellant has preferred the present appeal.

5. Dr.Amit George, learned counsel for the appellant has alleged that the entire bidding process was fraught with illegality inasmuch as the appellant, who was represented through one *Hitesh Garg*, was not allowed to offer a bid, even though he was present at the site where the auction was being conducted. It is alleged that the auction began at about 1 PM, wherein bid as high as Rs.3.50 crores was made, before the auction proceedings were suspended due to a pandemonium that broke out among the bidders. It is alleged that the auction was never resumed.

6. The appellant has alleged that he became aware of respondent No.2 being declared as highest bidder on 22.09.2022, when the order dated 15.09.2022 passed by the Execution Court was uploaded on the court website.

7. It is contended that the auction could not be concluded as the auction was never resumed. It is submitted that the declaration of respondent No 2 as the successful bidder is an outcome of a conspiracy between the respondent No.2 and the Court Auctioneer. In support of the submission, reference is made to a transcript of an alleged audio recording of the auction proceedings made by *Hitesh Garg*, alongwith the appellant's certificate issued under Section 65B of the Indian Evidence Act.

8. Appellant has contended that, to show his *bonafides*, he is willing to offer a sale consideration that is 10% higher than the respondent No 2's bid. Additionally, the appellant has relied upon his bank statement to show availability of funds on the day when auction was conducted.



9. Ms.Deepika V. Marwaha, learned Senior Counsel appearing for respondent No.2 has vehemently opposed the present appeal. She has submitted that in the auction proceedings held on 09.09.2022, neither the appellant was present nor any bid was placed on his behalf.

She further submits that after filing Objections, the appellant has shifted his stand and substantially improved upon his case in the appeal as well as in the rejoinder filed in the present appeal. She would contend that averments made in the rejoinder for the first time, cannot be taken into consideration as they do not form part of the objections.

While referring to the report submitted by the Court Auctioneer, learned Senior Counsel submitted that though bidding process was initially suspended but it was later resumed, and the respondent No 2 was declared as the highest bidder. She has further found fault with the authority letter statedly issued by the appellant to *Hitesh Garg* as the same did not authorise the latter to make any payments.

10. Mr.Bakshi Tejeshwar Singh, the Court Auctioneer, has also disputed the version of events projected by the appellant. He submits that the auction proceedings were carried out strictly in terms of the proclamation of sale under Order XXI Rule 66 CPC.

11. Pertinently, in his Report, the Court Auctioneer stated that he reached the suit property at about 1 PM and took photographs. He also collected Aadhar Card of the bidders and prepared a list of the bidders who were present at the site. The auction proceedings that began at about 1:30 PM were suspended as the bidders had started quarrelling with each other. The auction proceeding resumed at about 3 PM. A 'Second bidders list' of those



who were present, was prepared. After resumption, the bidding began with bid of Rs.1.65 crores and reached upto 2.80 crores that was offered by Asha Milwani, who was declared the highest bidder. She handed over drafts of Rs.10 lakhs and Rs.75 lakhs.

12. Concededly, the appellant himself was not present in the auction and claims to have authorised *Hitesh Garg* to represent him in it. In the Objections filed before the Execution Court, the appellant placed heavy reliance on the transcript of audio recording of the auction proceedings, made by *Hitesh Garg* to contend that the auction proceedings never resumed after disruption. The Objections, however are neither supported by any affidavit of *Hitesh Garg* nor accompanied by a certificate issued by him under Section 65B of the Indian Evidence Act, in support of the alleged transcript of the audio recordings. The Objections were only accompanied by appellant's certificate under Section 65B of the Evidence Act. In the considered opinion of this Court, for the deficiencies noted above, the Objections could not be taken into consideration.

13. Even if the Objections filed by the appellant are taken into consideration, it was claimed that auction proceedings were never resumed after it were initially suspended. It was claimed that the appellant's authorised representative stayed at the suit property till 6 PM. On the other hand, in the Report filed by the Court Auctioneer, it was clearly mentioned that auction proceedings duly resumed at about 3 PM resulting in the respondent No.2 being declared as the highest bidder. In the 'second bidders list' prepared by the Court Auctioneer, the name of *Hitesh Garg* is not mentioned. No other person or bidders, who were present at the spot filed



any Objection. Further, neither the decree holder nor the judgment debtor has challenged the auction proceedings. Even from a reading of the transcript, the appellant has failed to point out if any bid was made on his behalf in the auction.

14. This Court also notices that after dismissal of his Objections by the impugned order, in the present appeal, the appellant has made substantial improvements in as much as now a Certificate of *Hitesh Garg* under Section 65B of the Indian Evidence Act, which was not filed before the Execution Court, has been filed. Even in the present appeal, the averments are not supported by any affidavit of *Hitesh Garg*. Although learned counsel for the appellant has stated that bidders list prepared by the court auctioneer did not carry any signatures or photographs as was required to be taken under the Delhi High Court (Original Side) Rules 2018, however, on a specific query, learned counsel for the appellant admits that no such argument was raised before the Execution Court.

15. In the considered opinion of this Court, the appellant has failed to point out any material irregularity or fraud to justify setting aside the sale. It will be improper to set aside auction on the basis of a very casual allegations of irregularity. Some sanctity has to be accorded to the report submitted by the court auctioneer and cannot be undermined by unsubstantiated allegations.

16. Before proceeding further, let me recapitulate the law on the subject. The sale of immovable property i.e. sold in execution of a decree can be set aside on the ground of 'material irregularity or fraud in publishing or conducting the sale. Relevant rule in this regard i.e. Sub-rule (2) of Order



XXI Rule 90 CPC reads as under:

“(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.”

17. In Saheb Khan v. Mohd.Yousufuddin & Ors., reported as **(2006) 4 SCC 476**, the Supreme Court held that a sale cannot be set aside merely by establishing the material irregularity or fraud. The applicant has to further establish to the satisfaction of the Court that material irregularity or fraud resulted in substantial injury to the applicant. It was observed that a charge of fraud or material irregularity under Order XXI Rule 90 must be specifically made with sufficient particulars, and mere bald allegation would not suffice.

18. Later, the observations were reiterated in M/s Jagan Singh & Co. v. Ludhiana Improvement Trust & Others, reported as **2022 Live Law (SC) 733** where the Supreme Court also observed that the objector did not even produce any evidence, nor pointed out any material irregularity/substantial irregularity and also neither deposited the decree amount nor the amount equal to 5% of the purchase amount with the Court Auctioneer, as required under Order XXI Rule 89 CPC.

19. To the similar extent are the observations of the Supreme Court in Kadiyala Rama Rao v. Gutala Kahna Rao & Ors., reported as **(2000) 3 SCC 87** as well as Jaswantlal Natvarlal Thakkar v. Sushilaben Manilal Dangarwala & Ors., reported as **1991 Supp. (2) SCC 691**.

20. Consequently, the impugned order is upheld and the appeal is



dismissed alongwith miscellaneous applications with a cost of Rs. 25,000/- to be deposited with DSLSA (*Delhi State Legal Services Authority*) within four weeks from today. The cost so deposited shall be utilised for providing counselling/psychological support to POCSO victims requiring such assistance.

21. Proof evidencing receipt of the deposit of the amount shall be filed with the Registry of this Court within six weeks from today, failing which the Registry shall put up the case again before the Court.

(MANOJ KUMAR OHRI)
JUDGE

MAY 24, 2023/v

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