

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 77 OF 2024

Ved Prakash Arya

Age – 63 years,

residing at Bungalow No.21/22,

Rashmi Park, Waliv, Vasai (East),

Dist. Palghar – 401 208.

.... Appellant

v/s.

- 1) The State of Maharashtra
(at the instance of Economic Offences
Wing, Unit – VII, Crime Branch, Mumbai)
- 2) The Competent Authority,
9th Floor, Administrative Building,
Bandra (East), Mumbai – 400 051.

.... Respondents

**WITH
INTERIM APPLICATION NO. 852 OF 2024
IN
CRIMINAL APPEAL NO. 77 OF 2024**

M/s. Arya Lusters Associates

Through its one Partner Mr. Praveen Kumar

Babulal Jain, having office at 1st Floor,

212/1, Panjarapole Compound,

G.P. Building, C.P. Tank, Mumbai – 400004

....Applicant

In the matter between :-

Ved Prakash Arya

Age 63 years, residing at Bungalow No.21/22,

Rashmi Park, Waliv, Vasai (East),

Dist. Palghar - 401 208.

.... Appellant

v/s.

- 1) The State of Maharashtra
(at the instance of Economic Offences
Wing, Unit – VII, Crime Branch, Mumbai)
- 2) The Competent Authority &
Sub Divisional Officer,
Mumbai Suburban District,
9th Floor, Administrative Building,
Bandra (East), Mumbai – 400 051.

.... Respondents

Mr. Subhash Jha a/w. Mr. Ritesh Kesarwani, Mr. Krunal Jadhav, Ms. Praveena Venkatraman and Ms. Priti Singh i/b. Law Global for the Appellant.

Mrs. A.A. Takalkar, APP for the State.

Mr. V.S. Kapse with Mr. J.P. Mishra and Mr. J.S. Shukla for the Applicant/Intervenor.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 06th MARCH, 2024.
PRONOUNCED ON : 24th APRIL, 2024**

JUDGMENT [PER: SHYAM C. CHANDAK, J.] :-

1) Present Appeal filed under Section 11 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short '*MPID*' Act), is seeking an exception to an Order passed on 18th January 2024, by the learned Special/Designated Judge and Additional Sessions Judge, City Civil and Sessions Court, Mumbai (for short the '*Special Judge*') thereby rejecting the Miscellaneous Application No.1336 of 2023 filed by Appellant in MPID Special Case No.36 of 2000 (*for short 'the Case No.36/2000'*). Interim Application No.852 of 2024 is for permission to intervene in the Appeal. Both the Appeal and the Interim Application have the same Respondents.

2) The central and solitary issue involved in the Appeal and the Interim Application is common as the same is arising out of the same set of facts, the same impugned Order and relates to the same subject property. We, therefore, deem it appropriate to decide the Appeal and the Interim

Application by this common Judgment.

2.1) Hereinafter, for the sake of brevity the parties will be referred by their status in Appeal and Interim Application *i.e.*, Ved Prakash Arya as '*Appellant*' and M/s. Arya Lusters Associates as '*Applicant*'.

3) Heard Mr. Subhash Jha, learned counsel for the Appellant, Mrs. A.A. Takalkar, learned A.P.P for the State and Mr. V.S. Kapse, learned counsel for the Applicant. Perused the record. Additionally, we have also perused the records of Criminal Appeal Nos.1127 of 2018 and 1323 of 2018, as the parties have referred and relied on the common Judgment of this Court delivered in those Appeals which dealt with the legality or otherwise of certain Orders previously passed by the learned Special Judge concerning the auction proceedings of the same subject property.

4) Brief facts leading to file Appeal are as under:-

4.1) That, the Applicant M/s.Arya Lusters Associates is an unregistered partnership firm. The Appellant and Mr. Praveen Kumar B. Jain, who has filed the Interim Application are the partners of M/s. Arya Lusters Associates.

4.2) That, the subject property *viz.*, Hotel Jal, situated at CIS No.1752-A, Final Plot No.203, Opp. Domestic Airport and Hotel Sahara Star, Western Express Highway, Nehru Road, Vile Parle (E), Mumbai-400 057, was to be auctioned in relation to the MPID Special Case No.36/2000 pending on the file of trial Court.

4.3) M/s.Arya Lusters Associates, Hotel Avion Pvt. Ltd. and Mr. Vikram Vijay Singh participated in the said auction process by filing Miscellaneous Application Nos.186/2018, 732/2018 and 38/2018 respectively. At the time of the bid, the Appellant was present for and represented M/s.Arya Lusters Associates and Mr. Trevor Misquitta, the Director was present on behalf of Hotel Avion Pvt. Ltd. with their respective Advocates. However, the Applicant-Vikram Vijay Kumar Singh and his Adv. N.D. Jayvant, were absent.

4.4) By an interim Order dated 14th August 2018, passed in Miscellaneous Application No.186 of 2018 in Case No.36/2000, the learned Special Judge of the MPID Court declared that, the last bid of Trevor Misquitta is of Rs.46.50 Crores, whereas, last bid amount of Vedprakash Arya is Rs.46.70 Crores. The bid amount of Vedprakash Arya in MA No.186/2018 being a highest bid amount, said bid was confirmed in favour of Vedprakash Arya with a stipulation that, Appellant Vedprakash Arya would deposit the entire sale consideration within 60 days, failing which, his earnest amount of 10 percent deposited with the Respondent No.2 would be forfeited. After depositing the entire sale consideration, Respondent No.2 was directed to execute the Sale Deed of the subject property in favour of the highest bidder, Vedprakash Arya. The interim Order, as recorded in the *Roznama* dated 14th August 2018 of Miscellaneous Application No.186 of 2018, reads as under:

“ SPP Adv. Malankar for state present. Applicant present. Adv. Karnik for applicant present. API Phulpagare of EOW absent. CA-Mr. Parulekar from the office of CA present. Bider Vedprakash Arya in MA no.186/2018 and bidder Trevor Misquitta in MA no.732/18 are present. Applicant Vikram Vijay Kumar Singh and his Adv. N.D. Jayvant in MA no.38/18 absent when called. Bid is conducted in between Vedprakash Arya and Trevor Misquitta. Last bid of Trevor Misquitta is of Rs.46.50 crores, whereas, last bid amount of Vedprakash Arya is 46.70 crores. The bid amount of Vedprakash Arya in MA no.186/2018 being a highest bid amount, bid is confirmed in favour of Vedprakash Arya. Applicant Vedprakash Arya shall deposit the entire sale consideration within 60 days failing which, his earnest amount of 10 percent deposited with the CA shall be forfeited. After depositing the entire sale consideration, CA is directed to execute sale deed in favour of the highest bidder Vedprakash Arya in respect of attached property namely Hotel Jaal situated at Ville Parle Mumbai. MA no.38/18 is disposed of being infructuous.

Authenticated copy be given to CA for compliance. Adjd. for compliance on 16.10.18 at 2.45 p.m.”.

4.5) Thereafter, Hotel Avion Pvt. Ltd., the second highest bidder, filed a Miscellaneous Application No.1099 of 2018 in the said Case No.36 of 2000, seeking the following reliefs:-

“a) This Hon’ble Court may be pleased to correct roznama dated 14.08.2018 by mentioning final auction price as 46.75 crores instead of 46.70 on such terms and conditions as this Hon’ble Court may deem fit and proper.

b) This Hon'ble Court may be pleased to further correct the roznama dated 14.08.2018 that successful bidder is Arya Lusters Associates and not ved prakash arya as the bid was filed through Arya Lusters Association.

c) This Hon'ble Court may be pleased to further correct the roznama dated 14.08.2018 by mentioning the exact area which will be auctioned more particularly 1296 square metres bearing Plot No 1752 A on such terms and conditions as this Hon'ble Court may deem fit and proper".

4.6) Said Miscellaneous Application No.1099 of 2018 was partly allowed on 30th August 2018 by the learned Special Judge *i.e.* only to the extent of the prayer clause (a). The reliefs as to prayer clauses (b) and (c) were rejected. Accordingly, the incorrect bid amount of Rs.46,70,00,000/- noted in the interim Order/*Roznama* was corrected as Rs.46,75,00,000/-.

4.7) Hotel Avion Pvt. Ltd, feeling aggrieved, filed Criminal Appeal No.1127 of 2018 under Section 11 of the MPID Act, challenging the interim Order dated 14th August 2018 and the subsequent Order dated 30th August 2018, which partially allowed Miscellaneous Application No.1099 of 2018.

4.8) An Order dated 28th August 2018, rejecting Miscellaneous Application No.1100 of 2018 filed by Hotel Avion Pvt. Ltd., as well as Orders dated 19th October 2018 and 13th November 2018, pertaining to Applications at Exh.6 and Exh.9 respectively in Miscellaneous Application No.186 of 2018, passed by the learned Special Judge, were also challenged in Criminal Appeal No.1127 of 2018. Additionally, Hotel Avion Pvt. Ltd.

filed Criminal Appeal No.1323 of 2018 against the Order passed below Application at Exh.8 in Miscellaneous Application No.186 of 2018, by the learned Special Judge.

4.9) This Court heard the Criminal Appeal Nos.1127 of 2018 and 1323 of 2018 together and decided the same by a common Judgment dated 14th July 2023. Hotel Avion Pvt. Ltd. challenged that common Judgment before the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Cri.) No(s).9094-9095/2023. After hearing learned counsel for the parties, the Apex Court held that, there is no merit in the petitions. The Special Leave Petitions were accordingly dismissed, on 18th September 2023.

5) Mr. Subhash Jha, learned counsel for the Appellant vehemently submitted that, by Interim Order dated 14th August 2018 in Miscellaneous Application No.186 of 2018, the learned Special Judge had specifically directed to execute the sale deed (to issue sale certificate) in favour of the Appellant *i.e.*, Ved Prakash Arya. This Order was confirmed by the common Judgment of this Court passed on 14th July 2023, in Criminal Appeal Nos.1127 of 2018 and 1323 of 2018. The Order dated 30th August 2018, passed by the learned Special Judge thereby allowing the Miscellaneous Application No.1099 of 2018 partly to the extent of prayer clause (a) and rejecting the prayer clause (b) by which it was *interalia* sought that, let Appellant Ved Prakash Arya be not declared as the successful bidder but instead M/s.Arya Lusters Associates be declared as the highest bidder, was

also confirmed by this Court in the same common Judgment. Finally, the said common Judgment was upheld by the Hon'ble Supreme Court on 18th September 2023, when it dismissed the Petition(s) for Special Leave to Appeal filed by Hotel Avion Pvt. Ltd thus, it has attained finality. The Respondents never challenged the Interim Order before any Court.

5.1) Learned counsel submitted that, in the above background, the Respondents were duty bound to execute the Sale Deed or issue the sale certificate in the name of the Appellant, the highest bidder. However, it did not. The Appellant, therefore, through his Advocate, addressed certain letters to the Respondents and requested to execute the sale deed/issue the sale certificate of the subject property in favour of the Appellant, however, in vain. This left the Appellant with no choice except to file Miscellaneous Application No.1336 of 2023 to seek a direction against the Respondents to execute the Sale Deed/issue the sale certificate in favour of the Appellant. Thereafter, as noted in the *Roznama* dated 16th October 2023 of Miscellaneous Application No.1336 of 2023, Mr. Mandar Dandekar, from the office of Respondent No.2, gave a statement before the trial Court that, on or before the next date, he would execute the Sale Deed in favour of the Appellant – Ved Prakash Arya, but later it backed-out.

5.1.1) Learned counsel submitted that, however the learned Special Judge rejected the Miscellaneous Application No.1336 of 2023 by the impugned Order with a direction to the Respondent No.2/Competent

Authority to issue a fresh sale certificate/sale deed in respect of the subject property, as and in the name of Highest Bidder namely “M/s. Arya Luster Associates through its representative Mr. Ved Prakash Arya,”. The learned counsel submitted that, this is contrary to the Interim Order dated 14th August 2018 passed by the erstwhile Special Judge of the same trial Court. It is also completely in derogation to the Order of this Court passed on 14th July 2023 in Criminal Appeal Nos.1127 of 2018 and 1323 of 2018, which has been confirmed by the Hon’ble Supreme Court. The impugned Order, therefore, is illegal. As a result, the impugned Order may be quashed and set-aside. Accordingly, the Respondents be directed to issue the ‘Sale Certificate’ in the name of the Appellant – Ved Prakash Arya.

5.2) To support the aforementioned submissions, Mr.Jha, learned counsel has relied on the following decisions:-

- i) *Bhanu Kumar Jain v/s. Archana Kumar and Another*, reported in (2005) 1 SCC 787, paragraph 21’
- ii) *Prithawi Nath Ram v/s. State of Jharkhand and others*, reported in (2004) 7 SCC 261,
- iii) *Divisional Controller, KSRTC v/s. Mahadeva Shetty and another*, reported in (2003) 7 SCC 197, paragraph 23,
- iv) *Director of Education, Uttaranchal and others v/s. Ved Prakash Joshi and others*, reported in (2005) 6 SCC 98, paragraph 7,
- v) *State of Haryana v/s. Ranbir alias Rana*, reported in (2006) 5 SCC 167, paragraph 12.

5.3) Following principles of law emerge from said decisions.

i) One important consideration of public policy is that the decisions pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice.

ii) when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the order passed by a Court.

iii) The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.

“iv)If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court.

..... *Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt.*
.....

v) *A decision, it is well-settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a view point or sentiments which has no binding effect. It is also well-settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative.”*

6) In contrast, learned APP for the Respondents submitted that, the bid was submitted in the name of M/s. Arya Lusters Associates, who was represented by the Appellant but only as an Agent authorized by his co-partner in M/s. Arya Lusters Associates. The same has been held by this Court in the common Judgment passed on 14th July 2023, in Criminal Appeal Nos.1127 of 2018 and 1323 of 2018. The impugned Order is based on the same common Judgment, therefore, it cannot be termed as faulty. As such, there is no substance in the Appeal, and it may be dismissed.

7) Mr. Kapse, learned Advocate for the Applicant submitted that, Miscellaneous Application No.186 of 2018 was filed by the Applicant *i.e.* the partnership firm ‘M/s. Arya Lusters Associates’ through the Appellant, as its authorized agent to represent the firm in the bid. Therefore, the verification clause of Miscellaneous Application No.186 of 2018 was signed by the Appellant only as an authorized agent of the Applicant. Thereafter, the Applicant firm only was accepted as the higher bidder and not the

Appellant. Accordingly, the entire bid amount was paid on behalf of the Applicant firm. However, the Appellant started to litigate in his individual capacity by filing a separate Miscellaneous Application No.1336 of 2023 *i.e.*, by replacing the Applicant firm M/s. Arya Lusters Associates in the cause title, with his own name *i.e.*, Ved Prakash Arya. This is not permissible in law. Therefore, Miscellaneous Application No.1336 of 2023 was not maintainable. It was also devoid of merit. As such, the impugned Order is perfect in law. Hence, the Appeal may be dismissed.

8) We have carefully considered the rival submission in the light of the record and the decisions cited by the learned counsel Mr. Jha.

9) At the outset, we noticed that, M/s. Arya Lusters Associates is an unregistered partnership firm. The Appellant and Mr. Praveen Kumar B. Jain are its two partners. The 'Letter of Authority' dated 6th February 2018, was written on the letter head of Arya Luster Associates and, it was signed by partner Mr. Praveen Kumar B. Jain. Said letter clearly mentions that, the Appellant was authorised to represent the partnership firm-Arya Luster Associates in regards of the subject property and all other work related thereto. Thereafter, instantly, the Appellant filed Miscellaneous Application No.186 of 2018 on 7th February, 2018 naming Arya Lusters Associates as Applicant therein, signing the verification clause thereof as an Agent of Arya Lusters Associates and enclosing said 'Letter of Authority' dated 6th February, 2018. Mr. Jha, learned counsel, has not disputed the aforesaid

facts on record. Said facts indicate that, Miscellaneous Application No.186 of 2018 was filed by the Appellant as an Agent of Arya Lusters Associates and not in his individual capacity.

10) Considering the interim Order/*Roznama* dated 14th August 2018, it is clear that, as M/s. Arya Lusters Associates and Hotel Avion Pvt. Ltd. were not a living entity for the sake of the bid on the subject property, they were required to be represented by and act through their Partner/s or Director/s. Considering this difficulty, the Appellant being one of the partners and Mr. Trevor Misquitta, being the Director, participated in the bid as representative of their respective Firm/Company. In this background, it seems that, just for brevity purpose, in the interim Order/*Roznama* dated 14th August 2018, the learned Special Judge inadvertently noted that, the bid is conducted in between Ved Prakash Arya and Trevor Misquitta and directed to execute the sale deed in favour of Ved Prakash Arya, the highest bidder. Therefore, Hotel Avion Pvt. Ltd. misunderstood the interim Order as if it directed to execute the Sale Deed in favour of Ved Prakash Arya as an individual and not in the name of M/s. Arya Lusters Associates. Consequently, Hotel Avion Pvt. Ltd. filed Miscellaneous Application No.1099 of 2018, praying for correcting the interim order/*Roznama* dated 14th August 2018 as noted above. In this backdrop, the interim order/*Roznama* dated 14th August 2018 alone is not sufficient to conclude that, the Appellant was declared as the successful bidder in his individual

capacity.

11) As directed in the interim order/*Roznama* dated 14th August 2018, the entire sale consideration amount was required to be deposited within 60 days. However, from the letters dated 12th October 2018 and 24th October 2018, addressed to Respondent No.2 by the Appellant, it can be seen that, said entire amount could not be deposited within the stipulated 60 days. Therefore, the Appellant signed those letters for and on behalf of M/s. Arya Luster Associates and initially, sought two months time and then one month time from the trial Court, to deposit the remaining bid amount.

11.1) As noted in the Order dated 6th October 2018 passed by this Court in Criminal Appeal No.1127 of 2018 with Criminal Application No.1583 of 2018, Hotel Avion Pvt. Ltd. had challenged the identity/status as a legal entity of M/s. Arya Lusters Associates, the Respondent No.3 therein and contended that, the Respondent No.2 should not have allowed M/s. Arya Lusters Associates to participate in the bid. In view of this contention, the learned A.P.P. stated that, the Respondent No.2 would file an Affidavit-cum-Reply, meeting said contention. Thereafter, the Respondent No.2 wrote a letter dated 9th October 2018 to M/s. Arya Luster Associates and demanded its documents. This letter was responded by the Appellant addressing a reply-letter dated 16th October 2018, on behalf of M/s. Arya Luster Associates, signing as its partner and enclosing a copy of the firm's Registration Certificate of the Establishment, PAN Card and GST

Registration Certificate along with a list of Managing/Authorised partners *i.e.* Appellant and Mr. Praveen Kumar B. Jain.

11.2) Thereafter, the Respondent No. 2 submitted its Affidavit-cum-Reply dated 30th October 2018 in Criminal Appeal No.1127 of 2018, wherein it is stated that, the Respondent No.2 verified said documents of M/s. Arya Lusters Associates as supplied by the Appellant. Therefore, the contention of Hotel Avion Pvt. Ltd. was deemed vague and baseless according to the Respondent No. 2.

11.3) On 6th February 2019, the Respondent No.2 filed an Affidavit in Criminal Appeal No.1127 of 2018, stating that M/s. Arya Luster Associates has deposited the entire bid amount of Rs.46,75,00,000/-. The Affidavit also provided details such as F.D. Nos., dates, and amounts, showing how the bid amount of Rs.46,75,00,000/- was invested.

11.4) The aforesaid facts and circumstances also clearly indicate that, in the bid Appellant participated as an agent/representative of M/s. Arya Lusters Associates and not in his individual capacity. As noted above, it is a fact on record that, the entire bid amount was paid from the account of M/s. Arya Lusters Associates and not by the Appellant from his own pocket/account.

12) In the light of the aforementioned facts, this Court considered the interim Order/*Roznama* dated 14th August 2018, the Order 28th August 2018, the Affidavits submitted by the Respondent No.2 and other material

on record and decided the Criminal Appeal Nos.1127 of 2018 and 1323 of 2018 by a common Judgment dated 14th July 2023. In para 44 thereof this Court has held as under :-

“By the present appeal, the appellant has challenged the order dated 30th August 2018 by which the application being M.A. No.1099 of 2018 filed by the appellant for making corrections in the Order dated 14th August 2018 for correcting the name of the successful bidder as Arya Lusters Associates and not Ved Prakash Arya is rejected and only the prayer for correcting the final auction price as Rs. 46.75 Crores instead of Rs. 46.70 Crores is allowed. It is not in dispute that Arya Luster Associates is represented by Mr. Ved Prakash Arya and the entire amount towards the sale price is deposited by Arya Luster Associates through Ved Prakash Arya. Hence, we do not find any substance in the submissions made by the appellant for correcting the name of successful bidder”.

(underline emphasised)

12.1) From a plain reading of said paragraph 44, it is aptly clear that, M/s. Arya Lusters Associates was the only successful bidder, and not the Appellant as an individual. M/s. Arya Lusters Associates is a partnership firm. Consequently, this Court chose not to intervene in the Order dated 30th August 2018, which dismissed the Miscellaneous Application No.1099 of 2018. As stated above, the challenge/SLP filed against the common Judgment was dismissed by the Hon’ble Supreme Court and, the Judgment

dated 14th July 2023, has attained finality. This all manifests that, throughout the proceedings, up to the Apex Court, the Appellant consistently maintained that he participated in the bid as an authorized agent or representative of M/s. Arya Lusters Associates and not as an individual in his personal capacity.

12.2) This conclusion is fortified by the facts that, the vakalatnamas filed by the Appellant in Criminal Appeal No.1323 of 2018 and Criminal Application No.1583 of 2018, were signed by the Appellant as partner of M/s. Arya Lusters i.e., Respondent No.3 therein.

13) Here, it is pertinent to state that, Interim Application No.4062 of 2023 filed by the Appellant in the disposed of Appeal No.1127 of 2018 was similar to Miscellaneous Application No.1336 of 2023, as the prayer clause (a) in both these Applications was the same. In view of the aforesaid facts and circumstances, the Co-ordinate Bench of this Court observed that, the prayer clause (a) is substantive new relief sought by the Applicant. Therefore, there is no question of dealing with the said prayer in the disposed off Appeal. Hence, this Court held that, said Application is not maintainable in law as the Appellant was not party to the decided Criminal Appeal No.1127 of 2018. Accordingly, Interim Application No.4062 of 2023 was rejected. However, the fact of rejection of Interim Application No.4062 of 2023 has been suppressed in this Appeal by the Appellant while arguing this Appeal.

14) Unarguably, when an individual, firm, company etc. has participated in a public auction assuming a specific character and continued with that character in litigation that arose out of such public auction, then unless it is legally permissible and allowed by the Court concerned, they are not expected to change their character on their own to exploit the situation for their personal gain, especially to the detriment of the legitimate beneficiary, such as the highest genuine bidder. Nevertheless, the Appellant attempted to change his stance *i.e.* from partner to an individual.

15) In view thereof, we are of the firm opinion that, the Appellant was fully aware that, he had participated in the bid solely as an agent/representative of Arya Luster Associates, duly authorized by his co-partner Mr. Praveen Kumar B. Jain. However, possibly due to the brief nature of the interim Order/*Roznama* dated 14th August 2018 and, an inadvertent error committed while writing the said *Roznama*, the Appellant with malicious or oblique intent, began to assert for his personal benefit, that he not only participated in the bid as an individual but also was declared as the highest successful bidder. Then, having this design in mind, the Appellant deceptively and surreptitiously filed Miscellaneous Application No.1336 of 2023, naming himself as the Applicant with the intent to misguide the trial Court. This is illegal.

16) Undoubtedly, the publication of the bid of the subject property was an offer for sale. On accepting that offer in the name of M/s. Arya

Lusters Associates as its authorised agent/representative, the entire bid amount is paid by and from the account of M/s. Arya Lusters Associates. Therefore, now the Appellant cannot replace M/s. Arya Lusters Associates with his name particularly when the common Judgment of this Court in Appeal Nos.1127 of 2018 and 1323 of 2018 has attained finality. The Code of Civil Procedure does not allow for such an orthodox substitution because the Appellant was never a party as an individual in the earlier round/s of the litigation/s up to the Apex Court. Despite this, the Appellant filed the Miscellaneous Application No.1336 of 2023, naming himself as the Applicant and presenting a claim that contradicted his previous stance. The Miscellaneous Application No.186 of 2018 was pending, when the trial Court decided the Miscellaneous Application No.1336 of 2023 by the impugned Order on 18th January 2024. Finally, the trial Court decided the Miscellaneous Application No.186 of 2018 by an Order dated 24th January 2024. Both the aforesaid Orders carry the same or similar reasons. The Appellant, however, preferred this Appeal only against the Order dated 18th January 2024, even though the interim Order/*Roznama* dated 14th August 2018 was merged into the final Order dated 24th January 2024. This final Order is based on the findings of this Court recorded in paragraph no.44 of the common Judgment, which Judgment has already become final as noted above. The Co-ordinate Bench of this Court has already rejected Interim Application No.4062 of 2023 seeking the same relief. This Order has been

referred in the Order dated 24th January, 2024. As such, the claim in this Appeal is contrary to the principles enunciated in the reported decisions cited by the learned counsel Mr. Jha. For these reasons, Miscellaneous Application No.1336 of 2023 was not maintainable in law.

17) In the backdrop, this Appeal against the rejection of said Miscellaneous Application No.1336 of 2023 is liable to be dismissed. Consequently, there is no need for any Order in Interim Application No.852 of 2024, and accordingly, the same is liable to be disposed off.

17.1) Hence, the following Order:-

17.2) Criminal Appeal No. 77 of 2024 is dismissed.

17.3) Interim Application No.852 of 2024 is disposed off.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.04.25
18:46:32 +0530