IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2024
DELIVERED ON: 08.07.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU
W.A.No.2605 of 2022

1.The Tamil Nadu Industrial Investment
Corporation Limited,
Represented by its Managing Director,
692, Anna Salai, Nandanam,
Chennai-600 035.

2.The Deputy General Manager (Recovery),
The Tamil Nadu Industrial Investment
Corporation Limited,
692, Anna Salai, Nandanam,
Chennai-600 35.

3.The Regional Manager,
The Tamil Nadu Industrial Investment
Corporation Limited,
Special Recovery Branch,
United Shopping Complex, 1st Floor,
94, Dr.Nanjappa Road, Coimbatore-641 018.

4.The Branch Manager,

The Tamil Nadu Industrial Investment
Corporation Limited,
Special Recovery Branch,
United Shopping Complex, 1st Floor,
94, Dr.Nanjappa Road, Coimbatore-641 018. ... Appellant

-vs-

M/s.Balu Compendium,
Represented by its Manager,
B.Alagusundaram ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.08.2022 made in W.P.No.7081/2012.

For Appellant : Mr.Sulaiman Basha

JUDGEMENT

KRISHNAKUMAR, J.

This intra court appeal has been filed challenging the order of the Writ Court dated 23.08.2022 made in W.P.No.7081 of 2012, in and by which the Writ Court dismissed the challenge made to the notice issued by the fourth respondent dated 13.03.2012 and for a direction to the respondents to receive the balance payment of Rs.4,90,90,000/- from the appellant and to execute Sale Certificate and handover the possession including the vacant physical possession of the Schedule property.

2. The respondent is the successful bidder in the auction proceedings conducted by the respondent through the fourth respondent on 10.12.2010 with respects to the land and building for the bid amount of Rs.6,01,00,000/- . The respondent had initially deposited a sum of Rs.60,00,000/- at the time of auction and thereafter paid another sum of Rs.50,00,000/- on 25.05.2011 and requested the respondents to give grace period of 45 days to settle the balance amount of Rs.490.90 Lakhs. Challenging the auction held on 10.12.2010, the borrower namely the Llasar Flow Controls (p) Ltd., had filed W.P.No.28460 of 2010 and on account of the said writ petition, the respondent could not make further payments. Aggrieved by the said writ petition which was disposed of on 05.04.2011, the borrower also filed a Writ Appeal in W.A.No.910 of 2011, which came to be dismissed on 31.12.2011. According to the respondent, though the appellant authorities received the representation on 21.02.2012, has kept the matter pending till 13.03.2012 and all of a sudden, has passed the impugned notice dated 13.03.2012 directing the respondent to make the balance payment on or before 16.03.2012, subject to the condition that on the respondent's failure to do so, the amount paid by the respondent shall be forfeited.

3. The respondent challenging the aforesaid order dated 13.03.2012 on the ground of violation of principles of natural justice, has filed the writ petition. The Writ Court disposed of the writ petition with a direction to the respondents department to re-auction the property within a period of eight weeks from the date of receipt of a copy of this order and the amount that was deposited by the appellant shall be retained towards EMD in the proposed auction and shall be adjusted or refunded subject to final outcome of the auction which is directed to be conducted by the respondents. In case the writ petitioner/respondent is not declared as the highest bidder, the amount paid by the respondent shall be returned back by the appellants. Being aggrieved by the said order, the present writ appeal has been filed by the appellant Corporation.

4. Mr.Sulaiman Basha, learned Standing Counsel for the appellant Corporation has drawn the attention of this Court to the grounds of appeal and contended that the subject matter of property is an immovable property auctioned

by virtue of powers under Section 29 of the State Financial Corporation Act read with Transfer of Property Act, but the Writ Court has passed the impugned order by relying upon Section 64 of the Sale of Goods Act which deals with movable property. The Standing Counsel for the appellant Corporation further contended that as per Clause 16 of the terms and conditions for sale, if the amount has not been paid within the stipulated time and the particular asset has not been taken possession of by the successful bidder within 3 months of the confirmation of sale, the sale confirmation will be set aside and the amount paid will be forfeited without reference to the purchaser and as a consequence, the Corporation has the option to offer the sale to the second highest bidder and in such an event, the amount till then paid by the highest bidder will the forfeited and the Writ Court ought to have dismissed the writ petition and therefore, prays for intereference.

5. Heard the learned Standing Counsel for the appellant Corporation and also perused the materials on record. Though notice has been ordered and served to the sole respondent / writ petitioner, none appeared on their behalf.

6. The fact remains that the petitioner is the successful bidder in the auction

conducted by the appellant Corporation dated 10.12.2010 for the auction sale of the assets belongs to the borrower namely M/s.Llasar Flow Controls Private Limited. The total bid amount is Rs.601.00 Lakhs. The Earned Money Deposit of Rs.60,10,000/- was paid on 10.12.2010. The terms of payment in Para II (2) as stipulated in the terms and conditions of Sale, the balance 90% of the sale consideration is payable within 30 days from the date of receipt of the confirmation of sale from the corporation. In case the 10% advance is not paid on the same day, the amounts till then paid will be forfeited. In case after paying the 10% advance, the balance 90% is not paid, then the amounts till then paid will be forfeited. In either of the two circumstance, the Corporation will be at liberty to act as per Para III (16).

7. It is also relevant to quote Para III (16) of the Terms and Conditions of sale, which reads as under:

> *"16. In case the stipulated amounts are not paid within the stipulated time or the Land and Building and /or Plant and Machinery are not taken possession by the successful tenderer / bidder within three months after receipt of the confirmation of sale, the sale consideration in his favour will be set aside and the amount paid till then will be forfeited without reference to the purchaser. In*

such an event, the Corporation shall have the option of negotiating with and accepting the offer of the second highest bidder. In such an event also, the amounts till the paid by the highest bidder will be forfeited."

8. In the case on hand, the confirmation of auction is dated 27.04.2011. The respondent is bound to pay the balance 90% within 30 days from the date of confirmation of Sale i.e., on 27.05.2011. The respondent remitted another Rs.50.00 Lakhs on 26.05.2011 and vide letter dated ***24.05.2011*** had requested 45 days time to settle the balance sale consideration of Rs.490.90 Lakhs, which expired on 09.07.2011. Since the respondent failed to remit the balance amount of Rs.490.90 Lakhs, the appellant vide letter dated ***14.02.2012*** granted another 7 days till 21.02.2012 to the respondent to remit the balance sale consideration and to take possession of the property, failing which the Corporation will be constrained to take appropriate legal action as per the Terms and Conditions for Sale without anyfurther notice.

9. Admittedly, on ***21.12.2012***, the respondent sent a communication to the appellant stating that in view of the pending litigation in W.A.No.910/2011 arising

out of W.P.No.28460 of 2010, which was filed by the erstwhile borrower challenging the auction, there is a cloud over the title and therefore, requested the appellant to get a clarification from this Court as to the title. However, the fact remains that the said writ appeal was also dismissed by this Court and therefore, there is no legal impediment with regard to clear title over the property for effecting payment of the balance sale consideration. Finally vide letter dated 13.03.2012, the appellant informed the respondent to remit the balance bid amount on or before 16.03.2012, failing which the Corporation wil forfeit the part bid amount of Rs.110.10 Lakh so far paid as per the Terms and Conditions for Sale.

10. Thus, it is amply clear that sufficient opportunities had been given to the respondent i.e., nearly on three occasions to pay the balance sale consideration, however he failed to utilize the opportunities so provided and defaulted in remitting the balance sale consideration, resulting in invokation of forfeiture clause by the appellan Corporation. In the absence of any specific provision for refund of the Earnest Money Deposit, the respondent is not entitled to refund of

the EMD amount which is lying before the appellant Corporation. The petitioner having participated in the auction process by accepting the Terms and Conditions For Sale, cannot turn around and claim for refund of the EMD, which is a clear violation of the Terms and Conditions for Sale. This court finds considerable force on the submission made by the learned counsel for the appellant Corporation and that the contention of the respondent is legally unsustainable in the light of the specific clause stipulated in the Terms and Conditions of Sale.

11. In the light of the reasons assigned above, the Writ Appeal stands allowed and the order dated 23.08.2022 made in W.P.No.7084 of 2012 is set aside. No costs.

[D.K.K., J.] [K.B., J.]
08.07.2024

Index : Yes / No
Internet : Yes / No
Jvm

D.KRISHNAKUMAR, J.

and
K.KUMARESH BABU, J.

Jvm

Judgment in

W.A.No.2605 of 2022

08.07.2024