141 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

2024:PHHC:036457-DB
CWP-5954-2024 (O&M)
Date of Decision: 14.03.2024

Sharndeep Brar …Petitioner

Vs.

State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present Mr. Sandeep Sharma, Advocate for the petitioner.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The respondents-Haryana Shehari Vikas Pradhikaran, conducted e-auction process in respect of a residential plot measuring 336 sq. meters, at Sector 20, Urban Estate, Sirsa.

2. The detailed terms and conditions for e-auction notice are as under:-

> "All the intending bidders are required to deposit earnest money equivalent to 05% (Five percent) of the reserve price for the property (for which he/she is intending to participate) through Debit Card/NEFT/RTGS /Net Banking /by generating Challan for e-auction. In case the bidder intends to bid for more than one property in the same group or different properties in the different groups then separate EMD (05%) of reserve price shall be required to be deposited. The e-payment of EMD shall be made in the stipulated time period specified under clause 'C' relating to "HOW TO PARTICIPATE" of this brochure.
>
> The intending bidder shall be required to deposit an earnest money equivalent to 5% (five percent) of cost at Reserve Price of each property separately (for which the bidder intends to

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participate in e-auction) before participating in the e-Auction. Thus, anyone intending to bid for more than one property shall be required to deposit the EMD for multiple properties he/she wishes to bid before participating in e-Auction. In other words, EMD will have to be deposited separately for each property for which an intending bidder wants to participate.

Provided that no interest shall be payable on the EMD for the period from the date of its deposit till a decision is taken by the competent authority/committee w.r.t. acceptance or rejection of bid.

In the event of default or breach or non-compliance of any of the terms and conditions as indicated above or for furnishing any wrong or incorrect information at any point of time of E-Auction and afterwards, the Competent authority shall have the right to cancel the bid and forfeit whole amount of EMD deposited by the bidder."

The payment terms as per the bid documents are as under:-

The highest bidder shall be required to remit an amount equivalent to 10% of his/her quoted bid amount (including EMD already deposited) in the following time period:

Sr. No.	Total value of the bid (in rupees)	No of working days succeeding the final bid closing day.
1	≤ Rs.50 lacs	1 (One)
2	Rs.50 lacs to Rs. 1 Crore	2 (Two)
3	Rs.1 Crore to Rs.5 Crore	3 (Three)
4	≥ Rs.5 Crore	4 (Four)

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The highest bidder has to deposit the amount by way of online payment through Net banking etc. or through RTGS/NEFT by generation of challan on the e-auction portal. The link will be visible only to the Highest Bidder i.e. H1 of that property. In case of the highest bidder fails to deposit the said amount as specified above, his bid shall stand automatically rejected and the EMD deposited by him for participation in the e-auction shall stand forfeited in favor of HSVP. No further communication in this regard shall be issued separately.

33. After acceptance of the bid and verification of requisite documents, the successful bidder will be issued Letter of Intent (LOI) by the Estate Officer concerned. The LOI will be sent through registered post and through email at the registered address and email id of the successful bidder. All the payment schedule of the bid amount is linked with the date of dispatch of LOI through email. HSVP will not be responsible if LOI is not received by the Successful bidder due to change in his correspondence address or email id. It will be in the interest of such bidder to get his correspondence address or email id, if any, updated from time to time. The allottee will be further required to deposit another 15% of the quoted bid amount within 30 days from the date of dispatch of LOI on the HSVP website by generating Challan or online from his Plot user ID and password which will be issued by EO concern after generation of LOI. In case of failure to deposit the said amount within the above specified period, the LOI shall stand automatically withdrawn without any further notice in this behalf and the 10% amount

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deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for damages.

34. Thereafter, remaining 75% of the bid amount shall have to be deposited as per the following schedule depending upon the type of the property :-

(a). In respect of Residential and Commercial properties (Booth, Kiosk, DSS, SCO'S etc. which are governed by Architectural Control). Thereafter, remaining 75% of the bid amount shall have to be deposited as per the following schedule depending upon the type of the property within a period of 120 days from the date of dispatch of LOI without interest on HSVP website, failing which the LOI shall stand withdrawn without any further notice in this behalf and the 25% amount deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for damages.

2. The petitioner participated and was declared as the highest bidder for the plot and the auction was confirmed in favour of the petitioner for a sum of Rs.1,48,83,700/-. As per the statement made by the petitioner, it is apparent that the petitioner deposited following amounts on different dates:-

Date	Amount
12.05.2023	Rs.6,63,520/-
17.05.2023	Rs.8,25,870/-
20.07.2023	Rs.22,32,555/-
09.10.2023	Rs.44,50,000/-

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19.09.2023	Rs.1,48,837/-

3. However, in terms of the bid, she was required to deposit 10% of the bid amount initially i.e. Rs.14,88,370/- which she has deposited. Further, 15% of the quoted bid amount of Rs.22,32,555/- was to be deposited within 30 days from the date of dispatch of the letter of intent (for short 'LOI', which she deposited on 20.07.2023. A sum of Rs.1,11,62,775/- was to be paid in lump sum without interest within a period of 120 days but admittedly she has deposited only a sum of Rs.44,50,00/- and Rs.1,48,837/- on 09.10.2023 and 19.09.2023 and whereafter she has not deposited the balance payment. It is stated that the petitioner was getting her son treatment for autism spectrum disorder and is now ready to pay the balance amount along with interest against the said plot and prayed to direct the respondents to issue allotment letter and to accept the balance payment.

4. We have considered the submissions.

5. We may have sympathy on the family front but that cannot be a sufficient or good reason to entertain this petition. The petitioner cannot be allowed to deposit the remaining amount. The conditions of auction are sacrosanct to all the bidders and a person who chooses for a bid is expected to keep his promise failing which the auction offer stands cancelled and if he is unable to satisfy the conditions during the bid, he has a right to withdraw from bid but once he participates in the auction and the same finalized in his favour, the terms and conditions of the bid have to be complied with by both the parties strictly.

6. Letter of intent was issued to the petitioner with detailed terms and conditions as noticed above. Failing to deposit the balance amount within 120 days of the date of dispatch of the LOI invited forfeiture of the 25% of

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the deposited amount and cancellation of the LOI. The petitioner was in full knowledge about such conditions of auction and this Court would not enter into such bilateral contract and change its conditions. The Supreme Court in the case of Balram vs. Ilam Singh and others (1996) 5 SCC 705, followed the view taken in AIR 1954 SC 349 titled as Manilal Mohanlal Shah vs. Sardar Sayed Ahmed Sayed Mahamad. In Manilal's case (supra), the Supreme Court examined the provisions of rule 84, 85 and 86 of Order XXI of the CPC and observed as under:-

> "Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non- payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.

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It was urged before us that the Court could allow a set-off in execution proceedings under its inherent powers apart from the provisions of Order XXI, rule 19, of the Civil Procedure Code. We do not think that the inherent powers of the Court could be invoked to circumvent the mandatory provisions of the Code and relieve the purchasers of their obligation to make the deposit. ..” (emphasis supplied).”

7. In Balram’s case (supra), the Hon’ble Supreme Court held as under:-

“It is also to be noted that the duty to pay the full amount of purchase money within the prescribed period of 15 days from the date of sale of the property is cast on the purchaser by virtue of **Rule 85 of Order 21** and therefore, the entire responsibility to make full compliance of the mandatory provision is his. The proviso to Rule 85 is enacted for the benefit of the purchaser when he is the decree-holder and is entitled to the advantage of any set-off under Rule 72. The proviso giving this benefit to the decree-holder purchaser merely relieves him of the requirement of depositing that amount of which he is entitled to claim set-off, but it does not relieve him of the duty to deposit the full amount taking advantage of the set-off. Any mistake made while claiming the set-off which results in failure to deposit the full amount of purchase money within 15 days of the date of sale renders the decree-holder purchaser liable to the same adverse consequences which would ensue to any other purchaser due to non-compliance of Rule 85. No distinction is made between a

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decree-holder purchaser entitled to claim set-off under Rule 72 and any other purchaser for the purpose of strict compliance with the requirement under Rule 85. The contentions of the learned counsel for the appellant have no merit."

8. Following the said judgments, one of us while deciding I.A. No.07/2019 in the High Court of Judicature at Patna, has taken a similar view and cancelled the auction on account of non-depositing of the complete amount.

9. In view of the above, the letter of intent issued in favour of the petitioner stands cancelled on account of non-compliance of the terms and conditions of the auction. The Estate Officer shall now proceed further and re-auction the plot. The Estate Officer would also be entitled to forfeit the amount as laid down in the terms and conditions of the letter of intent. Of course, the petitioner would be entitled to refund of the remaining amount and also entitled to participate in the fresh auction process.

10. The writ petition fails and is dismissed accordingly.

11 All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No

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