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CIFCO PROPERTIES PVT. LTD. AND ORS.

v.

CUSTODIAN AND ORS.

MARCH 31, 2005

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[R.C. LAHOTI, CJ., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

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Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992—Sale of properties attached under the Act—Interlocutory order passed by Special Court directing the Custodian appointed under the Act to act as the Receiver, as the High Court Receiver was not able to hold the sale proceedings expeditiously—Interference with the order—Held: Interference is uncalled for, the order being purely interlocutory and not deciding any rights of any party—Interference would also be improper since, on facts, sale proceedings are already nearing completion.

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Special Court constituted under the Special Courts (Trial of Offences Relating To Transactions in Securities) Act, 1992 had initially directed the High Court Receiver to hold sale of certain properties for recovery of dues. But as the High Court Receiver was not able to hold the sale proceedings expeditiously and to the satisfaction of the Special Court, the Special Court directed further proceedings of sale to be conducted by the Custodian appointed under the Special Courts Act, directing the custodian to act as the Receiver. Hence the present appeal.

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Appellant contended that the Custodian plays an adversarial role in proceedings before the Special Court, hence it would not be just and fair to permit sale proceedings being conducted by the Custodian and that only the High Court Receiver should conduct the sale proceedings.

Dismissing the appeal, the Court

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HELD : 1. An interference with the impugned order passed by the Special Court, which is purely interlocutory and does not decide any rights of any party, is uncalled for. [78-F]

Gajadhar Prasad and Ors. v. Babu Bhakta Ratan and Ors., [1973] 2 SCC 629 and *Canbank Financial Services Ltd. v. Custodian and Ors.*, [2004]

H

8 SCC 355, referred to.

2. A public notice for holding auction of the property in the present case was issued by the Custodian on the 10th March, 2005 and the last date appointed for receiving the bids is 31st March, 2005. It is not deemed proper, in the facts and circumstances of the present case, to interfere midway and alter the course of the sale proceedings which are already nearing the accomplishment shortly. [79-G-H; 80-A]

3. Before the bids are finalized and the Court accepts any bid, the appellants would have the opportunity of hearing and, if the Court feels convinced that the property has not fetched the best or the expected reasonable price, then the Court is not powerless to reject all the bids and order auction afresh, subject to such directions as it may choose to make as to the manner of holding and conducting the sale and the person who would do it under the directions of the Court. [80-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8358 of 2004.

Form the Judgment and Order dated 30.11.2004 of the Special Court (Torts) Bombay in Misc Application No. 439 of 2004.

Dr. Rajiv Dhawan, Monaj Shukla, Shailendra Narayan Singh, Mrs. Neelam Kalsi and Vimal Chandra S. Dave, with him for the Appellants

S. Balakrishnan, R. Gopal Krishnan, Abhay Kumar and Sunbramionium Prasad with him for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. This appeal is directed against an order of interlocutory nature passed by the Special Court constituted under the provisions of the Special Courts (Trial of Offences Relating To Transactions in Securities) Act, 1992 (hereinafter 'the Act', for short).

Sale of certain properties is being held. The appellants do not dispute the liability of the properties to be sold for the recovery of dues. The Special Court initially directed the High Court Receiver to hold the sale of the properties. It appears that the High Court Receiver was not able to hold the sale proceedings expeditiously and to the satisfaction of the Special Court and the Court formed an opinion that this was because the High Court Receiver

A was over-burdened with work. The Court directed further proceedings of sale to be conducted by the Custodian appointed under the Act as requisite infrastructure for functioning as Receiver was available with the Custodian. Accordingly, the Court directed the Custodian to act as Receiver and hold and conduct the sale obviously under the directions of the Court. The Court also directed the progress report to be filed by the Custodian before the Court every four weeks.

C The singular submission made by Dr. Rajiv Dhawan, the learned senior counsel for the appellants, is that the Custodian plays more or less an adversarial role in the proceedings before the Special Court and, therefore, it would not be just and fair to permit the sale proceedings being conducted by the Custodian. It was urged that the proceedings should be held by the High Court Receiver only and he could be directed to conduct the sale proceedings expeditiously. The prayer made on behalf of the appellants has been opposed on behalf of the Custodian-respondent No. 1. It was submitted that ordinarily the Custodian holds and conducts the sale of immovable properties as directed by the Special Court and an interference with the impugned order, which is very reasonable and does not cause any prejudice to anyone, is uncalled for.

E The learned senior counsel for the appellants invited the attention of the Court to *Gajadhar Prasad and Ors. v. Babu Bhakta Ratan and Ors.*, [1973] 2 SCC 629, and submitted that various precautions in holding and conducting the sale to be observed by any court consistently with the observations made by this Court in the cited decision are not being observed and, therefore, the property may not fetch the best price. In particular, it was submitted that the reserve price has not been determined by the Special Court as it ought to have been.

F Having heard the learned counsel for the appellants and respondent No. 1, we are satisfied that an interference with the impugned order passed by the Special Court, which is purely interlocutory and does not decide any rights of any party, is uncalled for. Our attention is invited to the decision of this Court in *Canbank Financial Services Ltd. v. Custodian and Ors.*, [2004] 8 SCC 355 (para 69), wherein this Court has pointed out that one of the main functions to be performed by the Custodian is to deal with properties in the manner as directed by the Special Court. The learned counsel for respondent No. 1 pointed that every precaution is taken to protect the interest of the person whose property is being sold, as also of all the other parties concerned so as to fetch the maximum price of the property subjected to sale.

The learned counsel for respondent No. 1 also pointed out that the Custodian follows the same procedure for the sale of immovable assets as followed by the Official Receiver of Bombay High Court in holding auction of the immovable assets of notified persons. It was pointed out that the Custodian at first gets the valuation of the immovable asserts to be sold. The valuation is done by the valuer appointed either by the Special Court or on the directions of the Special Court. The Valuation Reports are submitted by the valuer to the Special Court in a sealed cover. After this, the Custodian releases advertisement in prominent newspapers in the city/town where the immovable property is located. The last date and time for receiving the bids is fixed. The Committee to open the bids is formed by the Custodian. The Committee meets on the appointed time and date where bidders are also expected to be present. All the bids are opened before the bidders and their signatures are obtained. The bid amount of different bidders is announced to the bidders. Then all the bidders are given opportunity to enhance the bid amount, if they so desire. The enhanced bids of all the bidders are compiled and their signatures are taken. All the bids along with the enhanced bids are then submitted to the Presiding Judge of the Special Court where the date is fixed for the consideration of the report of the Custodian on the bids received. The date fixed for consideration of the report in the Special Court is communicated to all the bidders indicating that they can enhance their bid before the Special Court, if they so desire. The bidders who are interested, appear before the Hon'ble Special Court and can enhance their bid. Based on the final bid received before the Hon'ble Special Court, the Hon'ble Judge may consider passing an Order confirming the sale of the immovable property in favour of a particular bidder. It is seen that the highest bid has been considered by the Special Court if it matches or is higher than the Valuation amount of the immovable property. Hence, the bidders at first give their bid in a sealed cover to the Custodian. Then bidders have the option to enhance their bid amount before the Committee formed by the Custodian. Then again these bidders can enhance their bid amount before the Special Court.

During the course of hearing it was brought to our notice that a public notice for holding auction of the property in the present case was issued by the Custodian on the 10th day of March, 2005 and the last date appointed for receiving the bids is 31st March, 2005. A copy of the public notice was produced for the perusal of the Court. We do not deem it proper, in the facts and circumstances of the present case, to interfere midway and alter the course of the sale proceedings which are already nearing the accomplishment

A shortly.

B Needless to say, before the bids are finalized and the Court accepts any bid, the appellants herein would have the opportunity of hearing and, if the Court feels convinced that the property has not fetched the best or the expected reasonable price then the Court is not powerless to reject all the bids and order auction afresh, subject to such directions as it may choose to make as to the manner of holding and conducting the sale and the person who would do it under the directions of the Court.

C That being the position of law, the appeal is dismissed. The interim order of stay passed on March 29, 2005 stands vacated.

B.B.B.

Appeal dismissed.