

Brindra Ban Agarwala vs Official Liquidator Of The Sarswati ... on 14 September, 1951

Equivalent citations: AIR1952ALL113, AIR 1952 ALLAHABAD 113

JUDGMENT

Mootham, J.

1. This is an appeal from an order of the Hon'ble the Chief Justice, sitting as Company Judge, dated 25-6-1951. The essential facts can be shortly stated. An order for the compulsory winding up of the Saraswati Soap and Oil Mills Ltd., was made by this Court on 25-10-1950, and by a further order dated 25-4-1951, the Official Liquidator was authorised to sell the mill premises by a public auction, the sale being subject to confirmation by the Court. The sale was held on the 27th May and the highest bid thereat was one of Rs. 1,10,000 made by the appellant. On the 9th June the Official Liquidator made a full report to the Court in which, after stating all the relevant circumstances, he expressed the opinion that the price offered by the appellant was inadequate and recommended that the sale should not be confirmed. On the 10th June, the firm of R.B. Bansidhar Sons and Company made an offer to the Court of Rs. 1,14,000 for the property. On the 16th June the learned Company Judge fixed the 25th June for the consideration of the Official Liquidator's report and he also directed the Official Liquidator to advertise the property again and call for higher offers. This was done but the advertisement did not come to the notice of the appellant. The appellant was however informed by the Official Liquidator that the matter would come before the Court on the 25th June; and on the 19th the appellant wrote to the Official Liquidator a postcard in which he said :

"Regarding Hardoi mill I have already made my position quite clear to you. As I have to steer my course singly now I do not find myself strong enough to raise the offer and if I don't succeed I will not be sorry for it."

2. On the 25th June the matter came before the Hon'ble the Chief Justice. The appellant was not present, but Messrs. R.B. Bansidhar & Sons were represented and raised their offer to Rs. 1,15,000. The learned Chief Justice, on a consideration of all the circumstances, was of opinion that that offer should be accepted and he directed that the property be sold to the firm for Rs. 1,15,000.

3. It is against this order that the appellant now appeals. He contends that, in the absence of any finding that the price offered by him was inadequate, the sale of the property to him should have been confirmed, and that in determining whether the sale should be confirmed or not the Court should not have taken into consideration the fact that subsequent to the sale a higher offer had been received. In view of the appellant's letter to the Official Liquidator of the 19th June, it is difficult to think that the appellant has a genuine grievance, and in view of the express condition of the auction that the sale would be subject to the confirmation by the Court, we think it clear that the appellant

has no right to insist on his offer, although it was highest, being accepted. It has been pressed upon us that there should have been an order by the Court refusing to confirm the sale of the property to the appellant. We think that any difficulty which arises in this case would have been avoided if such an order had been made in clear terms, but at the same time we think it manifest that that is the implication of the order of the 25th June, for the offer of Rs. 1,15,000 could not have been accepted save on the basis of the non-confirmation of the sale of the property to the appellant for Rs. 1,10,000.

4. Under the terms of sale the appellant, as the person who made the highest offer, was entitled to assume that the sale would be confirmed unless there had been some irregularity or fraud in connection with the sale or the purchase price was inadequate. The question whether the sale should or should not have been confirmed was, however, a matter which lay within the discretion of this Court. The Official Liquidator had expressed a strong opinion in his report of the 9th June that the price of Rs. 1,10,000 was inadequate, and we have no doubt that had this aspect of the matter been brought to the notice of the learned Chief Justice he would have refused to confirm the sale to the appellant on that ground. The fact that a higher offer had also been made no doubt weighed with him, but whether it did or not the appellant had no legal right to have the sale in his favour confirmed and, in our opinion, no sufficient grounds have been disclosed which would justify the conclusion that the Court's discretion was not judicially exercised.

5. We think, however, it is desirable to say that, in our opinion, when property is sold by an Official Liquidator subject to confirmation by the Court, the subsequent offer of a higher bid should not be a ground for refusing confirmation of the sale provided the price is adequate for otherwise, as Stodart, J., pointed out in *Rowthmall v. Nagarmall A. I. R. (27) 1940 Mad. 179 at p. 183*:

"Offers for the purchase of the property will be merely tentative. A prospective purchaser will not disclose to the liquidator the final figure to which he is prepared to go if his offer is liable to be outbid by someone else when the sale comes up before the Court for approval."

6. It is also in our opinion desirable that, in the case of sales effected by an Official Liquidator, a reserve price should, if possible, be fixed;

and in that event the purchaser at the sale, provided his price exceeds the reserve and there has been no fraud or irregularity, would be entitled to have the sale confirmed notwithstanding the subsequent receipt of a higher offer. *Soundararajan v. Mahomed Ismail, A.I.R. (27) 1940 Mad. 42.*

7. In these circumstances we dismiss this appeal, but there will be no order as to costs.

8. The order of stay made by this Court on 10-8-1951 is automatically discharged.