

Ashok Garg vs Renu Bhandari & Anr on 10 January, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ EX.P. 44/2018 & Ex.Appl. (OS)s 184/2018, 144/2019 and 895/2019
ASHOK GARG Decree Holder
Through: Mr. Jitender Chaudhary, Adv.

versus

RENU BHANDARI & ANR Judgement Debtors
Through: Mr. Jayant Tripathi and Mr. Dinesh
Dahiya, Advs. for DHs.
Mr. Harish Kumar Sharma, Court
Auctioneer.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 10.01.2020

Ex.Appl. (OS) 895/2019

1. This application has been filed by the judgment debtors with the following prayers pursuant to the order passed by the Division Bench of this Court in EFA (OS) 22/2019:

"It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

a) Allow the present application and recall the order dated 14.10.2018 along with the consequential and subsequent orders dated 05.11.2019 and 08.11.2019;

b) Declare that the Judgment Debtor no. 1 was the successful bidder in the auction, entitled to get the sale deed executed in her favour;

c) Pending adjudication of the present application, keep the operation of the orders dated 05.11.2019 and 08.11.2019, requiring the applicants to vacate the property in abeyance

d) Pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts of the case.

2. The aforesaid appeal was filed by the judgment debtors challenging the order dated October 14, 2019 passed by this Court. In the order dated October 14, 2019, the counsel appearing for the judgment debtors had withdrawn the application being Ex. Appl.(OS) 672/2019.

3. In the appeal before the Division Bench, it was contended by the judgment debtors that they had applied for loan and the loan was sanctioned before the cut off date, however, since the last date for making the payment was 4th Saturday, time would automatically stand extended by the next working day and thus, it was prayed that the e-mail dated September 30, 2019 issued by the Court Auctioneer was not tenable. In the e-mail, the Local Commissioner stated that the judgment debtor has defaulted in making the balance payment as per Clause 16 and therefore the EMD deposited by judgment debtor stands forfeited and he is inviting second highest bidder to purchase the property.

4. In any case, the Appellate Court on the request made by the counsel for judgment debtors that they would seek recall of the order dated October 14, 2019, granted leave in favour of the judgment debtors to enable them to file an application. It is pursuant to the said order, the present application is filed.

5. It is the stand of the judgment debtors in the application that in terms of the conditions pertaining to auction, the successful bidders will have to make payment of 75% of the balance amount within a period of 10 days (i.e., from the date of auction) by prescribed mode as mentioned in Para 4 of the said terms. This condition is stipulated in Para 16 of the terms and conditions of the auction, which is reproduced hereunder:

"The successful bidders will have to make the 75% balance payment within a period of TEN days (i.e. from the date of auction) by prescribed mode as mentioned in Para 4 hereinabove. If the next date is Holiday or Sunday, then on next first office day."

6. It is also the case of the judgment debtors that being the successful bidders, they were required to deposit the balance sale consideration within a period of 10 days from the date of auction as 10 days period had expired on September 28, 2019, which was a Saturday, besides being 4th Saturday of the month, a bank holiday, while the next date, i.e., September 29, 2019 was a Sunday. In other words, they could have deposited the amount on September 30, 2019. This opportunity has been denied. Additionally, it is stated in the application and so contended by the counsel, that the judgment debtors had, in fact, approached the State Bank of India, Parliament Street, New Delhi and obtained a loan. The document purported to be a sanction letter for the loan, was annexed as document no.3. Further, it is stated that an amount of Rs.46 Crores was available in the form of bank draft in the name of judgment debtor no.1 on the morning of October 30, 2019, which would have been utilized for making the balance payment. The said document, i.e., the bank draft is also annexed as document no.4 to the said application.

7. When the matter was listed on November 26, 2019, a submission was made by Mr. Jitender Chaudhary, learned counsel for the decree holder that the sanction letter, i.e., document no.3 of the State Bank of India dated September 23, 2019 and the bankers cheque (bank draft) dated September 30, 2019 with number 540276 are forged and fabricated. On this submission, this Court had

directed the decree holder to file an affidavit in that regard within two days. An affidavit was filed by the decree holder wherein in Para 3, 4 and 5 it is stated as under:

"3. That I had personally gone to enquire from the various State Bank of India (SBI) branches/offices situated at 11, Sansad Marg, New Delhi- 110001 who issued Loan Sanction Letter dated 23.09.2019 (Document No.3) and Banker Cheque (DD)(Document No.4). I had enquired from various officials of SBI SMS Centre (Central) (Ground Floor), SBI Zonal Office (1st Floor), SBI New Delhi Main Branch (1st Floor), SBI Government Business Unit (GBU) (2nd Floor), SBI Retail CPC (Ground Floor) at 11, Sansad Marg and my findings are as follows:

4. That as regards Document No.3 -Sanction Letter dated 23.09.2019 giving in-principle approval for 'Term Loan Project Funding', the following discrepancies were pointed out by SBI i. The Zonal Office of SBI is authorised to issue loans up to Rs 50 crores only and as this loan is for Rs. 92 crores, so it could not have been issued by Zonal Office.

ii. Loans above Rs 50 crores are approved by Committee at the Mumbai Head office so approval for such a loan could have come from Mumbai office. iii. The address mentioned in the sanction letter makes a reference to „Zonal Office' which is no longer referred to as such by SBI and is referred to as 'Administrative Office" so a sanction letter of September, 2019 could not make a reference to 'Zonal Office'.

iv. Sanction Letter of SBI do not bear a QR code.

v. The email address mentioned in the sanction letter is gbu@sbi.co.im which is an email address, used by Government Business Unit (GBU) of SBI a liasioning branch, not involved in loan sanction or disbursal. The main function performed by GBU is liasioning of the SBI with government departments vi. The Sanction letter is signed by 'Authorised Signatory' but an in principle loan sanction letter is signature by an official mentioning his/her designation.

vii. Letter mentions the line 'Insurance is subject matter of solicitation' but that is incorrect as loan is the subject matter of this letter.

5. That a combined, reading of the above, leads to the conclusion that Document No.3-Sanction Letter dated 23.09.2019 is a forged and fabricated document."

8. Despite time having been granted to the judgment debtors to file a response to the affidavit, no affidavit has been filed, rather, a stand has been taken on behalf of the judgment debtors that they still have not got the response from the State Bank of India.

9. When the matter was listed on January 7, 2020, Mr. Jayant Tripathi, learned counsel appearing for the judgment debtors had filed an affidavit on behalf of the judgment debtors wherein it was stated that despite repeated communications with the bank officials, the bank officials are yet to

provide written communications with regard to the sanction letter and the bankers cheque. On the same date, Mr. Chaudhary had handed over and relied upon a communication received by the decree holder vide RTI filed by him to contend that State Bank of India has categorically stated that bankers cheque, on which reliance was placed by the judgment debtors is a fake one. On this, the court had directed the decree holder to file an affidavit. An affidavit has been filed by the decree holder, wherein in Para 3 to 5 it is stated as under:

"3. That I had filed an application dated 16.12.2019 to Public Information Officer, SBI, Sansad Marg, New Delhi under RTI Act, 2005 seeking information as regards to the veracity of document no.3 (Page 27) and 4 (Page 28) annexed to the List of Documents filed along with the application (EA OS) 895/2019) on behalf of Judgments Debtors. The true copy of the application dated 16.12.2019 along with its enclosures is annexed herewith and marked as Document-1. I submitted the requisite fee for the RTI by way of Postal order. The true copy of the Postal order dated 16.12.2019 is annexed herewith and marked as Document-2.

4. That I received reply from SBI stating that my RTI application is being transferred to the concerned CPIO for direct disposal of RTI application. The true copy of the reply of State Bank of India dated 20.12.2019 along with the envelop is annexed herewith and marked as Document-3.

5. That I received information vide SBI reply dated 20.12.2019 to my RTI application from CPIO and Assistant General Manager, State Bank of India, Centralised Clearing Processing centre, "B" Block, 11, Sansad Marg, New Delhi. The information furnished by CPIO and Assistant General Manager, State Bank of India, Centralised Clearing Processing Centre has categorically stated that the Banker Cheque (Document No.3) is 'fake' and not available on their record. The true copy of the RTI reply dated 20.12.2019 received from CPIO & Assistant General Manager, State Bank of India, Centralised Clearing Processing Centre along with the envelop is annexed herewith and marked as Document-4."

10. Even though, an opportunity was granted to the judgment debtors to file a response to the affidavit to be filed by the decree holder, today Mr. Tripathi states, he does not wish to file any response affidavit to the affidavit filed by the decree holder. In fact, Mr. Tripathi makes a submission that he wishes to withdraw the present application and also seek his discharge from this case.

11. From the contents of the affidavit filed by the decree holder, it is clear that the State Bank of India has stated that the bankers cheque on which reliance was placed by the judgment debtors is a fake one. Mr. Chaudhary is right in contending that the conduct of the judgment debtors amounts to committing the contempt of this court, as by this conduct they had sought to interfere with the administration of justice by relying upon a fake document. In this regard, he placed reliance on the following Judgments in support of his submission.

1. Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC

2. Radhe Shyam Middha v. State of Delhi (2017) 15 SCC

3. Court on its own Motion v. Radhey Sham Middha 2015 SCC OnLine Del 14494

12. Though a request for withdrawal of the application is made, this court is of the view that the prayer as made in the present application being without merit, cannot be granted and is liable to be dismissed. It is ordered accordingly. The judgment debtors shall vacate the property immediately but not beyond the period of 10 days from today. The application shall be retained for the purpose of initiating action against the judgment debtors under the Contempt of Courts Act, 1971.

13. Accordingly, this court issue notice to the judgment debtors as to why they should not be punished under the provisions of the Contempt of Courts Act, 1971. The judgment debtor No.2, who is present in Court accepts notice for the judgment debtors. Let a response in that regard be filed by the judgment debtors within a period of two weeks. Both the judgment debtors / contemnors shall be present in the court on the next date of hearing.

14. Re-notify on January 31, 2020.

15. As an oral request has been made by Mr. Jayant Tripathi, Adv. on his behalf and on behalf Mr. Arjun Mitra and Mr. Dinesh Dahiya, Adv. for their discharge from this case in the presence of judgment no.2, who has given his consent, they are discharged from appearing for the judgment debtors in this case in future.

V. KAMESWAR RAO, J JANUARY 10, 2020/jg