

Kanchanjanga Commotrade Pvt. Ltd. Vs Shivarpan Engineering Pvt. Ltd. and Another

Court: Calcutta High Court

Date of Decision: March 22, 2002

Citation: (2004) 119 CompCas 712

Hon'ble Judges: Asok Kumar Ganguly, J

Bench: Single Bench

Advocate: Pratap Chatterjee and Paritosh Sinha, for the Appellant; Soumitra Sen and Arunabha Sarkar, for the Respondent

Judgement

Asok Kumar Ganguly, J.

The applicant, Kanchanjanga Commotrade (P.) Ltd. ("applicant"), the second highest bidder in respect of sale

of land including cottage, pond, boundary wall, machine and equipment and office furniture of Spawk Engineering (P.) Ltd. (liquidation) as ("the

company in liquidation") filed this application for setting aside the sale in favour of respondent No. 1 which was confirmed by the company judge

by an order dated March 26, 1999.

2. The relevant facts of the case are that an advertisement was inserted on March 4, 1999, by the official liquidator (hereinafter referred to as O/L)

in The Telegraph for sale of assets and properties of the company in liquidation.

3. In connection with the said sale, the applicant made an offer to the official liquidator for purchasing the aforesaid property of the company in

liquidation which was advertised for sale. The offer of the applicant was for an amount of Rs. 45,000. Thereafter, the matter was taken up by the

court for sale of the said property and in court, the applicant increased the bid from Rs. 45,000 to Rs. 6,50,000. The offer of respondent No. 1

was recorded at Rs. 6,00,000. But by an order dated March 19, 1999, the sale was adjourned with a direction upon the official liquidator to allow

further inspection of the assets and properties of the company in liquidation to the intending bidders so that the intending bidders may increase their

offer upon such inspection. This order was passed after hearing the submission made by the learned advocate appearing for the party and the

applicant was also represented by his learned advocate. Thereafter again on March 26, 1999, open bid was held in the court in which the

applicant participated along with respondent No. 1. In that bid, respondent No. 1 was the highest bidder at Rs. 13.5 lakhs and the bid of the

applicant was for Rs. 12.5 lakhs. The sale was confirmed in favour of respondent No. 1. After the sale was so confirmed respondent No. 2 paid

the entire sale amount of Rs. 13.5 lakhs to the official liquidator on June 28, 1999. Thereafter, the official liquidator made over possession of the

entire property measuring 4.68 acres with all movables to the respondent. It is not in dispute that after the sale was confirmed in favour of

respondent No. 1, respondent No. 1 filed an application being C. A. No. 217 of 2000 for a direction upon the official liquidator to execute the

conveyance in favour of respondent No. 1 in respect of 4.68 acres of land.

4. Thereafter, the learned company judge by an order dated May 17, 2000, gave a direction to respondent No. 1 to issue a further notice in

newspaper in respect of the said sale. According to the learned company judge, a dispute of the following nature cropped up and the relevant

portion of the said order, which would show the nature of the dispute, is set out below :

The dispute with regard to the land in question which has been sold as per the said sale notice according to Mr. Bachawat's client which has been

specifically mentioned in the said notice that the items mentioned therein being land, fishing pond, boundary walls, small cottage and the items in

respect of the land which has been specifically mentioned that land as per searching is 4.6800 acres. However, it has further been stated by way of

a note given by the official liquidator in the said terms that as per the certificate dated January 12, 1991, one of the then managing directors of the

company in liquidation a part of the land was sold out. The said land is about 2.3076 acres. But no documents were ever produced before the

official liquidator nor has it been found but by way of causing a search by the official liquidator or on his behalf. In these circumstances the only

question at this stage is whether the official liquidator has arrived to convey the whole property as mentioned hereinabove or leaving the part as

mentioned by the official liquidator in respect of a certificate issued by one, the then managing director, that the property has been sold. No

documents were ever been produced before the official liquidator which is admitted before me by the official liquidator nor is there any existence in

the records of the official liquidator's office. In these circumstances it would be proper for me to direct the purchaser to issue a notice in the

newspaper once in the Statesman and once in Aajkal in respect thereof that if anybody is interested in respect of the said land in question should

produce their title before the official liquidator within a month from date failing which the official liquidator is directed to take all necessary steps in

the matter to execute conveyance in favour of the petitioner being the purchaser in this matter.

5. Thereafter, necessary advertisement was published on June 5, 2000. The application being C. A. No. 456 of 2000 was filed by the applicant

praying for cancellation of the sale also and for an order directing rebidding for the sale of the assets and properties of the company in liquidation.

On the said petition the learned company judge passed an order directing the applicant to deposit an amount of Rs. 15 lakhs to show its bona

fides, inasmuch as the full amount has already been deposited by respondent No. 1 in whose favour the sale has been confirmed and the learned

company judge passed an order restraining the execution of conveyance without the leave of the court and respondent No. 1 was restrained from

creating any third party right in respect of the property in any manner whatsoever. Those orders were of course, passed by the learned company

judge without prejudice to the rights and contentions of respondent No. 1 that such an application was not maintainable.

6. Thereafter, on July 10, 2000, the learned company judge reduced the amount from Rs. 15 lakhs to Rs. 5 lakhs as the applicant expressed its

inability to deposit the amount of Rs. 15 lakhs. Then, it appears on July 12, 2000, that the amount of Rs. 5 lakhs was deposited by the applicant

with its advocate on record. Thereafter, on July 12, 2000, the learned company judge recalled the order dated May 17, 2000, as nobody came

forward before the official liquidator to lodge their claim in respect of the said land in question and nobody claimed to be the owner of the said

land. Then an application was filed by the applicant with a prayer that the amount of Rs. 5 lakhs which was deposited by the applicant with its

advocate on record may be returned to the applicant. Against this factual background, learned counsel for the applicant challenging the sale of the

property of the company in liquidation in favour of respondent No. 1 urged that they quoted the price for purchasing the property on the basis that

the land in the name of the company was measuring 2.3724 acres out of total land of 4.68 acres. The applicant proceeded on the basis that land

measuring about 2.3076 acres was sold by the managing director of the company. Therefore, on June 5, 2000, when the applicant came across

the notice inviting the objection to the execution of a conveyance of 4.68 acres of land instead of 2.3724 acres of land, the application for recalling

the sale was filed.

7. The main submission of learned counsel for the applicant is the total area of land which is sought to be sold by the official liquidator in favour of

respondent No. 1 was in violation of terms and conditions of the sale and as a result whereof respondent No. 1 was getting a larger area of land

contrary to what was mentioned in the terms and conditions in the sale notice and the valuation report. The applicant's case is that if it had known

that the land is for a larger area, it would have quoted a higher bid.

8. Learned counsel for respondent No. 1, on the other hand, questioned the locus standi of the applicant to file this application. It has been argued

by him that the applicant is admittedly an unsuccessful bidder. The applicant is neither the secured creditor nor a contributory of the company in

liquidation. Learned counsel submitted that it is nobody's case that any secured creditor applied for setting aside the sale. It has also been

submitted that the price for which the assets and properties of the company in liquidation have been sold to respondent No. 1 exceeds the price

mentioned in the valuation report. Furthermore, learned counsel submits that in the sale notice it has been made very clear that the sale notice is on

an, "as is where is basis" and the terms and conditions of sale are that the sale will be as per inventory made by the valuer on "as is where is and

whatever there is basis and subject to the confirmation by the court".

9. This court finds that the terms and conditions of the sale contain a note of caution to the effect that the managing director of the said company in

liquidation had certified that the land to the tune of 2.3076 acres had been sold out. But it is not mentioned in any other document except the

certificate by the managing director. The balance-sheet of the company does not indicate any part of the said area of 4.68 acres had been sold out

by the company in liquidation. No particulars of alleged sale or the name of the purchaser or the money obtained on such sale appears from the

documents available with the official liquidator. The records which are maintained by the registry and the statutory authority show that the 4.68

acres area of land is still lying in the name of the said company in liquidation. It has, further, been stated that the inspection of the said property was

offered to the parties by the official liquidator and inspection was offered for the entire 4.68 acres of land.

10. Learned counsel for respondent No. 1 relied on a search report issued in this connection by one Suresh Prosad Shaw, an advocate. The said

report dated November 1, 2001, has been annexed as annexure D to Company Application No. 217. The said search report specifically mentions

that the land in question has been purchased by the company in liquidation under the following heads :

Item No. Deed No. Year of purchase Area of land

A 1524 1985 .7800 acres

B 1707 1985 .7800 acres

C 1745 1985 .7800 acres

D 1825 1985 .7800 acres

E 1830 1985 .7800 acres

F 1671 1985 .7800 acres

Total land : 4.6800 acres

11. The said report also mentions that the land was purchased in the year 1985 and this fact is also mentioned in the sale notice published by the

official liquidator. The certificate given by the learned advocate makes it clear that there has been no sale deed from 1985 to 1989 in respect of the

above land. The above plots of land still stand in the name of company in liquidation.

12. Learned counsel for respondent No. 1 further submitted that the inspection of the entire property was offered to the parties by the official

liquidator and the representative of respondent No. 1 took inspection of the entire 4.68 acres of land. The entire land was enclosed by boundary

wall and the boundary wall was also sold as one of the properties of the company in liquidation. It has also been stated that all the intending

purchasers including the applicant have given their respective price with their eyes open after taking inspection of the entire property. The certificate

of the erstwhile managing director which was mentioned by the official liquidator by a note of caution was the element of risk involved in such

purchase.

13. In this connection, this court finds that in respect of the sale there are two valuation reports. The first valuation report dated August 4, 1997,

was prepared by one Mr. Subimal Mukherjee. In the said report the property was valued at Rs. 9,50,000 and the second valuation report filed by

the said valuer dated July 29, 1998, shows the valuation of the property at Rs. 7,25,500. The price at which respondent No. 1 purchased the

property is Rs. 13.5 lakhs which is far in excess of the reserve price. It is nobody's case that the said properties have been sold below their proper

price. There is no challenge to the valuation report either.

14. Learned counsel further submitted that the possession of the entire property was made over by this honorable court to respondent No. 1 on July

19, 1999. After obtaining possession respondent No. 1 spent large sums of money for the purpose of getting the said property secured after

evicting encroachers and unauthorized occupants. Respondent No. 1 has invested substantial money in the development of the said property.

15. Learned counsel for the applicant on the other hand stated that the said term "as is where is basis" is applicable only in respect of the movable

property of the company which would be sold during the instant sale and the said term "as is where is basis" is meant for valuation and inventory to

be made by the valuer on the same. It is not meant for the entire land. It has been stated that it is not open to respondent No. 1 to get the entire

land conveyed in his favour. Learned counsel also urged that the reliance by respondent No. 1 on search report cannot be accepted or explained

in the light of the agreement that was executed by the then managing director of the company, Mr. Arun Sud in favour of a third party.

16. Learned counsel further submitted that in a sale by the court valuation quoted by the valuer is not the best price and the final price is much

higher than the index price. It has also been stated that the valuation of the plant and machinery is also to be included in the list of assets to be sold.

Learned counsel very much relied on a letter dated November 18, 1999, given by respondent No. 1 requesting the official liquidator to demarcate

the property. It has been submitted that from this letter it is clear that the total area of 4.68 acres cannot be conveyed in favour of respondent No.

1 and the sale which for the entire area of 4.68 acres is, therefore, invalid and should be set aside.

17. In the facts and in the circumstances of the case discussed above, this court finds that the applicant had adequate notice and opportunity to

ascertain the area of the plot which was the subject matter of sale by the court. It has not been stated by the applicant that it had no opportunity of

ascertaining the exact area which was put up for sale. The order of the court dated March 19, 1999, shows that the learned company judge gave

opportunity to all the parties including the applicant to inspect the premises.

18. From the evidence and material on records it does not appear that there is any doubt that the entire property was put up for sale. The search

report referred to in this proceeding also confirms the same. Apart from that, the applicant is not a secured creditor of the company nor is it a

contributory. The applicant is merely an unsuccessful bidder. The fact that at the time of giving its bid the applicant did not, assuming that the case

sought to be made out is plausible, properly ascertain the area of land in question, cannot be a ground for which the sale confirmed in favour of

respondent No. 1, should be set aside. The sale, which is otherwise valid and has been confirmed by court, cannot be set aside on any pretext

raised by an unsuccessful bidder. This will go against the sanctity of proceeding relating to sale which is confirmed by court. It is also not the case

of the applicant that the price at which landed property has been sold is shockingly low. In fact, no such case has been made out. In the instant

case, the sale is basically the sale of landed property. It was not sold as a going concern and sale notice does not show the existence of any costly

machinery on the property in question. Therefore, considering all these facts, this court does not find much substance in this application for setting

aside the sale. The application is, therefore, dismissed. As a result of the dismissal of this application, the prayer made by the applicant in C. A.

No. 657 of 2000 for return of the amount of Rs. 5 lakhs kept with its advocate on record may be considered by the appropriate company judge in

accordance with law.

19. Since, this application for setting aside the sale is dismissed, all interim orders are vacated and the official liquidator may now proceed with

preparation of conveyance of the property purchased by respondent No. 1 in accordance with law. C. A. No. 217 of 2000 is, thus, allowed and

C. A. No. 456 of 2000, is, thus dismissed.

20. There will be no order as to costs.

21. The files and papers from the office of the official liquidator, which were kept with the record, may be handed over to learned counsel for the

official liquidator. Xerox certified copy of this judgment and order be made available to the parties expeditiously.