

PETITIONER:
NAVALKHA & SONS

Vs.

RESPONDENT:
SRI RAMANYA DAS & ORS.

DATE OF JUDGMENT:
27/10/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
DUA, I.D.

CITATION:
1970 AIR 2037 1970 SCR (3) 1
1969 SCC (3) 537
CITATOR INFO :
F 1974 SC1331 (9)
R 1984 SC1471 (42)

ACT:
Companies (Court) Rules, 1959, r. 273-Sale of properties of company in liquidation-Principles to be followed by Judge exercising discretion.

HEADNOTE:

In the winding up proceedings of a company in liquidation, the official liquidator and a share-holder sought permission of the High Court for the sale of immovable and movable properties and actionable claims of the company. The company Judge appointed commissioners for the sale in accordance with the terms and conditions mentioned in his order. One of the conditions was that the proclamation of sale was to be advertised twice in each of 5 leading daily newspapers. The commissioners had the proclamation published in only 4 dailies and it was only in two of them that there were two insertions. No offer having been received, the time fixed was extended when the appellant made his offer as the sole offeror. The commissioners applied to the Judge for confirmation of sale, but before the sale in favour of the appellant was confirmed another person made an offer of a larger amount complaining that he could not make the offer earlier as there was no adequate publicity. The Judge thereupon arranged an open bid in the Court itself on that very day, as between the appellant and the now offeror. The appellant became the highest bidder and the appellant was directed to pay the balance of amount by a particular date, but again, before the sale in his favour could be confirmed, a third person made an application offering a still large amount, complaining of the want of adequate publicity and advertisement of the sale. The Judge rejected the application and confirmed the sale in favour of the appellant. In appeal, the Letters Patent Bench set aside the order of the single Judge and directed that he should take fresh steps for sale of the property either by calling for sealed tenders or by auction in accordance with law. In appeal to this Court,

HELD : When the acceptance of an offer by the commissioner is subject to confirmation by the court, the offeror does not by mere acceptance get any vested right in the property and he cannot demand automatic confirmation of his offer. It is the duty of the court to satisfy itself that having regard to the market value of the property the price offered is reasonable, even though there is no suggestion of irregularity or fraud. Otherwise, the act of confirmation of the sale would not be a proper exercise of judicial discretion. But once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. [5 b-F; 6 A-B]

In the present case, the publicity was not as wide as originally proposed. Therefore, the single Judge was right in refusing to confirm the first offer of the appellant, and holding an auction. But he erred in confining the auction to two persons only. The auction was no doubt conducted in a public place but it was not open to the general public,

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nor was it held after due publicity. Therefore, the sale was not a public sale, which implies, a sale after giving notice to the public with liberty to the public to participate. Rule 273 of the Companies (Court) Rules, provides that all sales shall be made by public auction, or by inviting sealed tenders, or in such manner as the Judge may direct. Since there was want of publicity and there was lack of opportunity to the public to take part in the auction, and there was inherent prejudice in the method adopted by the Judge, the acceptance of the appellant's bid by the Judge was not a sound exercise of discretion and the Division Bench was right in directing a fresh sale. [6 B-C; 7 A-B, C-D, F]

Gordhan Das Chuni Lal v. T. Sriman Kanthimathinatha Pillai, A.I.R. 1921 Mad. 286, Rathnaswami Pillai v. Sadapathi Pillai, A.I.R. 1925 Mad. 318, S. Soundarajan v. M/s. Roshan JUDGMENT:

Sundararajan, A.I.R. 1951 Mad. 986, referred to.

&
CIVIL APPELLATE JURISDICTION : Civil Appeals Nos 1085 and 1086 of 1967.

Appeals from the judgment and decree dated September 24, 1965 of the Andhra Pradesh High Court in O.S.A. Nos. 3, and 4 of 1965.

V.S. Desai and P. C. Bhartari, for the appellants (in both the appeals).

P.Ram Reddy and A. V. V. Nair, for respondent No.5 (in C.A. No. 1085 of 1967) and respondent No. 5 (in C.A. No. 1086 of 1967).

R. V. Pillai, for respondent No. 6 (in C.A. No. 1085 of 1967) and respondent No. 5 (in C.A. No. 1086 of 1967).

The Judgment of the Court was delivered by Ramaswami, J. These appeals are brought by certificate from the judgment of the Andhra Pradesh High Court dated September 24, 1965 in O.S.A. Nos. 3 and 4 of 1965.

In the winding up proceedings of Hyderabad Vegetable Products Co., Ltd. (in liquidation) the 5th respondent (Official Liquidator) sought permission of the Court for the sale of immovable and movable properties and actionable claims of the Company. This application was Company Application no. 67 of 1963. A shareholder of the Company

one Sirajuddin Babu Khan also made an application C.A. No. 93 of 1964 to a similar effect. On these applications an order was passed by Jagan Mohan Reddy J., on April 17, 1964 appointing respondents 2, 3 and 4 as Joint Commissioners for the purpose of selling immovable and movable properties and actionable claims of the aforesaid Company in accordance with the terms and conditions mentioned in the order. Accordingly a sale proclamation August 1, 1964 was drawn and issued by the respondents 2 to 4 'inviting offers for the purchase of movable and immovable properties and actionable claims of the Company as a single unit. According

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to the terms and conditions of sale the Commissioners were not bound to accept the highest offer and were at liberty to reject any offer without assigning any reason. Immediately after the offer was accepted by the Commissioners the offeror had to deposit 15% of the offer amount as initial deposit and the balance of the amount together with the amount required on non-judicial stamp paper within 15 days from the date of acceptance. Acceptance of the offer by the Commissioners was subject to the condition of confirmation by the High Court and the offeror was entitled to take delivery of possession of the properties only after such confirmation. It was made abundantly clear in cl. 16 that in all matters relating to the sale of the properties the decision of the Commissioners shall be final and shall be binding subject to the control of the High Court. One of the conditions also was that the proclamation of sale was to be advertised twice in each of the five leading dailies The Statesman, The Times of India, The Hindu, Indian Express and the Hindustan Times to ensure wide publicity and the Commissioners were also required to get the proclamation printed and distributed among the likely purchasers. The Commissioners got published the proclamation in four leading dailies only : the Hindu, Indian Express, The Statesman and the Hindustan Times. No publication was made in the Times of India nor was the advertisement made twice in any of the said newspapers. In two of them there were two insertions but in the remaining papers there was only one insertion. In addition to the advertisement the Commissioners got printed 300 copies- and posted them to various industrial concerns. The last date fixed for the receipt of the offers was September 8, 1964. Not even a single offer was received by that time. The time for receipt of offers was extended by the Court to the end of November, 1964 at the instance of the Commissioners. The appellant Navalkha & Sons happened to be the sole offeror. It has offered a sum of Rs. 7,91,001 which was made of Rs. 2,50,000 for the immovable property and Rs. 5,41,001 for the machinery. It made no offer for the actionable claims. The appellant made deposit of Rs. 50,000 in the shape of demand draft drawn on the State Bank of Hyderabad. The offer was accepted by the Commissioners on December 2, 1964. The appellant was called upon to deposit 15 % of the amount of the offer as initial deposit immediately and the 'balance together with the amount required for non-judicial stamp paper within 15 days from the date of acceptance. The appellant did make the initial deposit. The Commissioners then made an application on December 3, 1964 to the High Court for confirmation of the sale. On December 11, 1964 the High Court extended time for payment of the balance amount for two weeks. On December 24, 1964 one Gopaldas Darak made an offer of Rs. 8,50,000 saying that he could not offer in time because he came to know of the sale only two days

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prior to that date and it was due to the fact that there was no adequate publicity. To show his bona fides he gave a demand -draft for a sum of Rs. 1,00,015. The learned Judge decided that the property did not fetch its proper price and there was possibility, of higher bids. Instead of directing a fresh auction or calling for fresh offers the learned Judge thought it proper to arrange an. open bid in the Court itself on that very day, as between the appellant and Gopal Das Darak. Before starting the bid the learned Judge gave time to the appellant to think over and say whether it was willing to accept the course decided upon and to participate in the auction bids. The appellant consented and volunteered to take part in the bid and became the highest bidder-at Rs. 8,82,009. The learned Judge accepted the said bid as final bid and concluded the sale in favour of the appellant directing it to pay the balance of the money together with the amount required for non-judicial stamp on January 31, 1965 making it clear that in case of default the deposit already made would be forfeited. The appellant paid the balance of the amount on January 30, 1965. On the same day one Padam Chand Agarwal, made an application (C.A. 44 of 1965) offering Rs. 10,00,000. He complained that publicity of the sale of the property was not adequately made and he came to know of the advertisement very late. He was prepared to enhance the offer to Rs. 10,00,000 and was also willing to participate in open bid if the Court so -decided with Rs. 10,00,000 as initial bid. The learned Judge rejected his request and by his order dated February 19, 1965 'held that the sale should be confirmed in favour of the appellant. Aggrieved by this Order Padam Chand Agarwal filed appeal no. 4 -of 1965. One Ramnuia Das, a contributory also chose to prefer an appeal (appeal no. 3 of 1965) against the order of confirmation. According to him, the publicity given was inadequate and -the first offer given by the appellant was too low and the Court 'has rightly refused to confirm the acceptance of the offer. His grievance was that the learned Judge should have held the auction, only after due publicity but has not done so and the course 'followed not achieve the object of getting adequate price of the property. Both appeals 3 and 4 are, therefore, directed against the confirmation of the auction sale held in Court on December 24, 1964., These appeals were allowed by Letters Patent Bench consisting of the Chief Justice and Kumarayya J.. and the order of the :learned single Judge dated February 19, 1965 read with his previous order dated December 24, 1965 was set aside. It was directed that the learned Judge should take fresh steps for the sale of the property either by calling sealed tenders or by auction in accordance with law. The tenders would be called or the auction would take place with the requisite condition of minimum offer or starting bid of Rs.; 10,00,000.

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It was argued by Mr. V. S. Desai on behalf of the appellants that the discretion of the learned Company Judge was not erroneously exercised when he accepted the bid of the appellant in the, auction held on December 24, 1964 and consequently there was no justification for the Division Bench to interfere with the order of the learned Single Judge. We are unable to accept, this argument as correct. Rule 273 of Companies (Court) Rules, 1959 is to the following effect

"Procedure at sale.-Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer

approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct."

The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal v. T. Sriman Kanthimathinatha Pillai*(1) it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed 'is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Rathnaswami Pillai v. Sadapathi Pillai*(2) 'and *S. Soundajan v. M/s. Roshan & Ca.*(1). In *A. Subbaraya Mudaliar v. K.Sundarajan*(4) it was pointed out that the condition of confirmation by the Court being a safeguard against the property being sold at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auc-

(1)A.T.R. 1921 mad. 286.

(3) A.T.R. 1940 mad. 42.

(2) A.I.R. 1925 Mar. 318.

(4) A.I.R. 1951 Mar. 1986.

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tion held in pursuance of its orders, should see that the price fetched at the auction, is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in *Roshan & Co's case*(1) In the present case the Division Bench has come to the conclusion that publicity was not as wide as originally proposed by the Commissioners in their affidavit. The publication was made in four dailies namely The Hindu, Indian Express, Hindustan Times and The Statesman. There was no publication in the Times of India. Further out of the four newspapers in which publication was made only in two there were two insertions and in the remaining two there was only one insertion. This was contrary to what the Commissioners have promised in their affidavit dated July 8, 1964. No doubt, other efforts were made for giving publicity but these efforts were not sufficient to attract more than one offer. When the case came for confirmation on

December 24, 1964 there was an application by Babu Khan that the property was of much higher value and that fresh offers must be invited again with wider publicity. There is also the affidavit of the -State Government dated August 29, 1963 in which the value of the property was shown as Rs. 13,40,000. Besides, on that very day, one Gopaldas Darak had come before the Court with a higher offer showing his bona fides and earnestness by depositing more than one lakh of rupees. He came with the complaint that there was not sufficient publicity as to attract people from the north and that as soon as he came to know he gave his offer. In these circumstances the learned single Judge was right in expressing his reluctance to confirm the offer of Navalkha & Sons. He therefore decided to have an open bid as between the appellant and Darak in the court itself on that very day. The complaint of Padam Chand Agarwal is that the second step taken by the Single Judge of holding an auction without giving wide publicity was not justified in law. Rule 273 of the Companies (Court) Rules provides that all sales shall be made by public auction or by inviting sealed tenders or in such manner as the Judge may direct. It appears that on April 17, 1964 it the instance of the Official Liquidator and at the instance of a contributory the Court had approved of the terms and conditions of sale which provided for calling of sealed tenders. On December 24, 1964 the learned Judge realised the inefficacy of this course and decided to abandon the original procedure and put the properties to auction. But having made up his mind to resort to auction the

(1) A.I.R. 1940 Mad. 42.

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learned Judge confined the auction to only two persons namely ,the previous tenderer and the fresh tenderer. The auction in question no doubt was conducted in a public place but it was not a public auction because it was not open to the general public but was confined to two named persons. Secondly it was not held after due publicity. It was held immediately after it was decided upon. It is, therefore., obvious that the sale in question was not a public sale which implies sale after giving notice to the public wherein every member of the public is at liberty to participate. No doubt, the device resorted to considerably raised the previous bid yet it was not an adequate price having regard to the market value of the property to which reference has already been made. The denial of opportunity to purchase the property by persons who would have taken part in the auction bid but for want of notice is a serious matter. In our opinion the learned Judge having decided on December 24, 1964 that the property should be put to auction should have directed auction by public sale instead of confining it to two persons alone. Since there was want of publicity and there was lack of opportunity to the public to take part in the auction the acceptance of the highest bid by the learned Judge was not a sound exercise of discretion. It is contended on behalf of the appellant that confirmation was discretionary with the court and the Division Bench ought not to have interfered with the discretion exercised by the Company Judge. It is true that the discretion exercised by the Judge ought not to be inter fired with unless the Judge has gone wrong on principle. As already pointed out the learned Company Judge having decided to put the property to auction went wrong in not holding the auction as a public auction after due publicity and this has resulted in prejudice to the Company and the creditors in that the auction did not fetch adequate price. The prejudice was

inherent in the method adopted. The petition of Padam Chand Agarwal also suggest that want of publicity had resulted in prejudice. In these circumstances the Company Judge ought not to have confirmed the bid of the appellant in the auction held on December 24, 1964. We are accordingly of opinion that the Division Bench was right in holding that the order of the Company Judge dated February 19, 1965 should be set aside and there should be fresh sale of the property either by calling sealed tenders or by auction in accordance with law. The tender will be called or the auction will take place with the minimum offer or with the starting bid of- ten lakh rupees.

For these reasons we hold that the judgment of the Division Bench of the Andhra Pradesh High Court dated September 24, 1965 is correct and these appeals must be dismissed with costs. One set of bearing fee.

V.P.S.

Appalls dismissed.