

PETITIONER:
M/S. MOTORS & INVESTMENTS LTD.

Vs.

RESPONDENT:
THE NEW BANK OF INDIA & ORS.

DATE OF JUDGMENT: 29/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:
THE 29TH DAY OF OCTOBER, 1996

Present:

Hon'ble Mr.Justice K.Ramaswamy
Hon'ble Mr.Justice G.B.Pattanaik
A.K.Ganguli, Sr.Adv. and V.Balachandran, Advs. with him
for the appellant
A.T.M.Sampath, Parmanand Gaur, M.A.Chinnaswamy, Advs.
for the Respondents.

O R D E R

The following Order of the Court was delivered:
Leave granted.

This appeal by special leave arises from the judgment and decree of the Division Bench of the Madras High Court made on October 24,1990 in OSA No.148/82. The first respondent Bank laid the suit for the recovery of mortgage amount by sale of 44 acres of land out of 80 acres belonging to respondents 2, 3 and 7 in this appeal. Pending suit, respondents 2 and 3 were adjudged as insolvents in I.P.No.15/1978. In consequence, their right, title and interest held in the land stood vested in the official assignee, the 4th respondent in this Court by order dated July 18,1979 directed the official assignee to sell their interest in 44 acres of land by public auction. Since no one was coming forward to purchase the land in the auction, the appellant had offered Rs.67,500/- and by order of the Court dated July 26,1982, the Court accepted the appellant's offer of Rs.77,500/-. By proceeding dated August 18,1982, the learned Single Judge confirmed the sale. Feeling aggrieved, on appeal, the 7th respondent, in this Court respondent No.9, had offered a sum of Rs. 16,28,000/- and respondent No.8 had offered a sum of Rs.1,50,000/- which was later raised to Rs.2,50,000/- respectively. Treating it as offer, the Division Bench directed the 9th respondent to deposit 10% of the upset price but he did not deposit the same; the official assignee was also asked to file a report before the Division Bench on the value of the land prevailing in the neighbourhood varies between Rs.4,000/- and Rs.5,000/- per acre and the lands in question would fetch as on December 10, 1990, a sum of Rs.3,35,000/- which was worked out at the rate of Rs.7.600/- per acre. The High Court has set aside

the sale and directed re-auction of the land, fixing the upset price offered by the 8th respondent and directed the sale in open auction accordingly.

Pending proceedings in this court, 7th respondent had also offered to deposit a sum of Rs.20,00,000/- and as per the direction of this Court the order was revoked. When the appeal was dismissed by a short order, on being mentioned by the learned counsel for the respondents to hear the matter on merits, order was passed on July 24,1995 recalling the order dated July 17,1995 and setting out the matter for disposal. Thus, this appeal by special leave is being heard.

Shri Ganguli, learned senior counsel for the appellant, contended that while the appellant had offered the consolidated sum of Rs.67,500/- since no one was coming forward to bid at higher amount, the appellant offered the highest bid of Rs.77,500/-. The learned single Judge, in view of the fact that the sale was postponed on more than one occasion, considered it appropriate to confirm the sale. The Division Bench, having noticed that respondent No.9 had failed to deposit 10% of his offer, was not justified in setting aside the sale and directing resale of the property. Even in this Court, the respondents have not complied with the offer of depositing the amount within the time and it indicated that the respondents are only intending to prolong the sale but they were not sincere to bid the highest price, as offered by the appellant. Shri Sampath, learned counsel for the respondents, contended that the report of the official assignee is self-evident that the price of the lands in the neighbourhood varies between Rs.4,000/- and Rs.15,000/- per acre. Therefore, the price fetched by the sale of 44 acres, i.e., Rs.77,500/- is too meagre and inadequate. Accordingly, the Division Bench was right in directing re-auction of the property fixing upset price offered by the 8th respondent. Though the 7th respondent's conduct is not worthy of credence, the fact remains that 44 acres of the land were sold for inadequate consideration; therefore, this court is not inclined to interfere with the order passed by the Division Bench.

Having regard to the facts and circumstance of the case, the question is: whether the confirmed action of sale by the learned single Judge is valid in law. It is now well settled legal position that when the Court was inclined to bring the property to sale, the endeavour of the Court should be to sustain the Court sale. Equally though Court sale is compulsive sale, equal endeavour should be made to fetch adequate price for the property sold so that the decree debt would get satisfied and surplus, if any, could be paid over to the judgment debtor. In this case, in the suit for redemption of the mortgage, decree has yet to be passed. Since respondent Nos.3 and 4 have been declared insolvents, the right, title and interest had by them in the property stood vested in the official assignee and the official assignee was directed to put the properties to sale. Resultantly, the properties have been brought to sale. Sri Sampath says that insolvency order was annulled but the same was disputed by Shri Ganguli. Be it as it may, it is seen that 44 acres of land situated in Vadakkupattu in Chhangulput District near about Chennai were brought to sale for a price Rs.77,500/-. It appears to be highly inadequate and the learned single Judge, therefore, was not right in confirming the same. The Division Bench has taken note of the offer made by the 8th respondent at Rs.1,50,000/- which was subsequently raised to Rs.2,50,000/- and directed to conduct the open auction. The Division Bench also has taken into consideration the report

submitted by the official assignee that the market value in the neighbourhood lands ranges between Rs.4,000/- and Rs.15,000/- per acre and the lands in question would be worked out at the rate of Rs.7,600/- per acre, as in the years 1990. This circumstance would also indicate that the sale of the land made in 1982 was too inadequate. Therefore, an attempt should have been made by the learned single Judge to have the property sold by public auction by inviting either tenders or open auction. The Division Bench, therefore, was right in its conclusion in setting aside the sale.

Shri Ganguli may be right in his contention that the appellant having deposited the money, should be suitably compensated and no direction has been given by the Division Bench in that behalf. In the event of any subsisting liability against the estate of the respondents 2 and 3, to discharge any debts, it may be open to the official assignee to bring such part of the properties which may be sufficient to discharge the liability, to sale by public auction either by inviting tenders or through appropriate procedure under Order XXI of the CPC and then to conduct the sale in accordance therewith. In case the official assignee has kept Rs.77,500/- in any interest earning security, the principal amount together with interest is directed to be refunded to the appellant. In case the amount was not kept in any deposit and was used to discharge outstanding debt due by respondent Nos.2 and 3, the appellant is entitled to get interest at 18% per annum on the amount deposited by the appellant and the sale should be so conducted keeping in view the interest liability. From the amount secured by sale, apart from discharging the liabilities fastened on the lands, the interest also should be repaid to the appellant from the date of the deposit till date of repayment to the appellant.

The appeal is accordingly disposed of but in the circumstances without costs. It may be open to the appellant to participate in the auction that may be conducted by official consignee. In that event, it may be open to the appellant to withdraw the amount.