

CASE NO.:
Appeal (civil) 2406 of 2007

PETITIONER:
Laxmikant Chhotelal Gupta & Ors

RESPONDENT:
State of Maharashtra & Ors

DATE OF JUDGMENT: 09/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2406 OF 2007
(Arising out of SLP (C) No. 2615 of 2006)

S.B. Sinha, J.

1. Leave granted.

2. Respondent Nos. 5 to 7 herein were partners of a firm known as M/s. Somras Distillers. It ran into arrears inter alia in payment of sales tax.

3. The properties of the partners were attached. A Writ Petition came to be filed by the respondent nos. 5 to 7 inter alia praying for a direction to the sales tax authorities to recover the dues in respect of the said firm from the appellants alone and not from them.

4. As Respondent Nos. 1 to 4 intended to put the properties of the partnership firm on auction, the High Court in terms of an Order dated 28.4.2003 directed:-

"In so far as item No. 4, namely Plant Machinery of the firm is concerned, we are informed that the upset price fixed is rupees twenty-five lacs and no bidders are coming forward. It will be appropriate if advertisement of auction in relation to this item is given in the national dailies which are widely circulated. The cost of auction as also advertisement shall be payable out of the auction sale proceeds. The auction be conducted within a period of 45 days from today and report of auction in respect of the above mentioned properties be filed before the Court, S.O. to eight weeks."

5. Pursuant to the said direction, an auction was held on 6.6.2003 of the factory premises of the firm; the highest bid being Rs. 65 lakhs.

6. Public auction in such matters are governed by the provisions of Maharashtra Land Revenue Code, 1966, the relevant provisions of which read as under:-

"Purchase money when to be paid.

202. The full amount of purchase-money shall be paid by the purchaser before the expiration of two months from the date on which sale of the immovable property took place or before the expiration of fifteen days from the date on which the intimation of confirmation of the sale is

received by the purchaser, whichever is earlier;

Provided that, if the last date on which the purchase-money is to be paid happens to be a Sunday or other authorised holiday, then the payment shall be made before the sunset of the first office day after such date."

"Effect of default.

203. In default of payment within the prescribed period of the full amount of purchase-money whether of movable or immovable property, the deposit after defraying thereout the expenses of the sale, shall be forfeited to the State Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold."

7. A question arose as to whether the auction purchaser had deposited the amounts in terms of the said provision. By an order dated 29.4.2004, despite the High Court's notice having been drawn thereto, a learned Single Judge directed:-

"I am unable to find any substance in this argument. It may be noted that despite the order of the Court that the auction shall be held strictly in accordance with law, it has confirmed the auction by order dated 09.12.2003 and now the petitioners cannot take recourse to contempt proceedings. They should have brought this fact to the notice of the Court in Writ Petition No. 2530/2001. In this view of the matter the petition is dismissed. Needless to say that the petitioners are at liberty to move the Court in Writ Petition No. 2530/2001."

8. A similar application for recalling the said order was dismissed directing;

"In view of the above referred observations, it is evident that auction sale was confirmed subject to result of this petition. Therefore, grievance of any party to the proceedings would be considered at the time of final hearing. The earlier orders have been passed by us in the petition from time to time keeping in view the necessary recovery to be effected by the Department towards sales tax dues."

9. It was further directed:

"In view of the above referred facts and circumstances, we see no justification whatsoever for respondent Nos. 5 to 7 to oppose handing over of possession particularly when auction of sale is already confirmed by this Court and huge amount has already been observed in the earlier order dated 9.12.2003 that auction sale is subject to result of the petition. In the circumstances, we direct respondent Nos. 5 to 7 to hand over possession of the property in question to the Department without any obstacle within fifteen days from today."

10. The matter was brought before this Court thereagainst by the

appellants herein which was marked as Civil Appeal No. 6631 of 2005. Upon hearing the counsel for the parties, this Court opined:-
...In that view of the matter, it was obligatory on the part of the High Court to consider the effect of non-compliance of the provisions of Section 202 & 203 of the Maharashtra Land Revenue Code itself. Before confirming the sale, the High Court otherwise also could have directed the parties to take recourse to the said Code. Had such an order been passed by the High Court, it would have been open to the appellants herein to file appropriate application before respondent no. 3, who was the appropriate authority to hold such auction.

Having regard to the peculiar facts and circumstances of this case we are of the opinion that it was a fit case wherein the High Court should have exercised its jurisdiction in entertaining the appeal filed by the appellants herein, so as to enable the parties to know as to where they stand. Mr. Lalit, is right in his submission that if the possession of factory premise is handed over to the auction purchaser of the land and building where the factory is situated, the appellants herein may be put to irreparable and irretrievable injury. What would be the fate of the machineries installed in the factory premises is also not known. We are informed at the Bar that another auction may take place in respect of the plant and machineries but in relation thereto there may be another auction purchaser and so long as such auction sale in relation thereto is not confirmed and the plant and machinery are not handed over to the said auction purchaser, the same would remain in possession of the auction purchaser.

11. When, however, the matter was placed before the High Court pursuant thereto, it again failed to examine the effect of the provisions of Sections 202 and 203 of the Maharashtra Land Revenue Code, and disposed of all objections including the one for recalling its Order dated 9.12.2003 filed by the appellants being Civil Application No. 3730 of 2004 directing ;

"The present state is that some of the properties which are already put to auction and purchased by auction purchasers could not be handed over to them for various objections raised by respondent nos. 5 to 7 who are the main contestants. This includes the factory and plant of M/s. Somras Distillers.

We, therefore, propose to dispose of this petition by directing respondent nos. 1 to 4 to take further steps in the matter in accordance with law and after giving fair opportunity to all concerned, including the petitioners and respondent nos. 5 to 7 and the auction purchasers so as to enable them to lodge their objections to the procedure adopted by the sales-tax department in conducting auction sale of the property and after hearing all concerned pass appropriate orders in accordance with law."

12. Appellants are, thus, before us.

13. It is unfortunate that the High Court did not address itself to a vital aspect of the matter despite its attention having been drawn thereto. It

purported to have disposed of all the pending applications directing only the respondent Nos. 1 to 4 to take further steps in the matter in accordance with law, but what those other or further steps in the matter would be, have not been spelt out. Such a direction was wholly unwarranted.

14. There cannot be any doubt or dispute that the dues of the revenue should be recovered wherefor properties of the defaulters inter alia can be put to auction, but there cannot also be any doubt or dispute that procedures laid down therefor must be complied with. This Court has noticed in its Order dated 28.10.2005 passed in Civil Appeal No. 6631 of 2005 that the High Court resorted to a wrong procedure. The issues involved in the writ petition filed by the respondent Nos. 5 to 7 was limited. The High Court unjustly expanded its jurisdiction.

15. Even when an auction takes place under orders of the competent civil court, the procedures laid down in the Code of Civil Procedure are required to be complied with. Objections to the validity of sale at the instance of one party or the other are required to be considered and determined. Even an appeal lies against such an Order in terms of Order XLIII Rule 1(u) of the Code of Civil Procedure.

16. Provisions of a statute whether directory or mandatory necessitating strict or substantial compliance are questions which must be determined by the courts. This Court thought that the High Court would do so. Presumably the effect and purport of this Court's Order having not been brought to its notice, we, therefore, are of the opinion that the matter should be directed to be considered afresh by the competent authority. We are informed at the bar that Respondent No. 4 being Assistant Commissioner of Sales Tax is the competent authority therefor. We, therefore, while setting aside the Order of the High Court would direct the said authority to consider the contentions raised by the appellants herein on their own merits.

17. Before parting with this case, we may however, notice the submissions of Mr. P.S. Mishra, the learned senior counsel appearing on behalf of the auction purchaser, that the requirement of Section 202 and 203 of the Code had been complied with. Learned counsel appearing on behalf of the writ petitioners/ respondents submit that the intention of the appellants herein is to delay the disposal of the matter. We need not go into the correctness or otherwise of the said contentions, as Respondent No. 4 indisputably would have to take into consideration facts and aspect of the matter also.

18. Mr. Satyajit A. Desai, learned counsel appearing on behalf of respondent Nos. 1 to 4 submitted that it may be possible for Respondent No. 4 to dispose of the objections within a period of two weeks from the date of filing of the documents by the parties.

19. Original records in respect of the auctions held must be with the respondent No. 4. Even otherwise, the same should be produced before him. Appellant herein would file their written objections as also a copy of Civil Application No. 3730 of 2004 before respondent No. 4 within two weeks from date. Writ Petitioners/respondents as also the auction purchaser having regard to the fact that they are aware of the contentions raised by appellants herein may file replies thereto within the said period. Respondent No. 4 thereupon may proceed to determine the matter in accordance with law within a period of four weeks' thereafter, upon giving an opportunity of oral hearing to the parties after fixing a date of hearing.

20. We make it clear that all contentions of the parties shall remain open. The impugned judgment is set aside. This Appeal is allowed with the aforementioned directions. In the facts and circumstances of this case, however, there shall be no order as to costs.