

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9951 OF 2014

(Arising out of Special Leave Petition (Civil) No.15445 of 2010)

HUDA & Anr.

... Appellants

Versus

Kedar Nath

... Respondent

J U D G M E N T**ANIL R. DAVE, J.**

1. Leave granted.
2. Being aggrieved by the judgment dated 10th December, 2009 in R.S.A. No.790 of 2008 delivered by the High Court of Punjab & Haryana at Chandigarh, this appeal has been filed by the original defendant – Haryana Urban Development Authority, through its Chief Administrator.

3. The facts giving rise to the present litigation in a nutshell are as under :-

The present respondent had participated in an auction conducted by the appellants for disposal of certain booths situated in Sector 9 at Panchkula and had offered the highest bid of Rs.4 lakhs for booth no.103 situated in the said sector. As he was the highest bidder, subject to the conditions of the auction, he was allotted the said booth vide Memo No.12351 dated 14th September, 1988. The respondent had deposited Rs.40,000/-, being 10% of the amount of bid, immediately and thereafter he had further deposited a sum of Rs.60,000/- so as to make 25% of the total amount offered by him.

4. The balance amount of Rs.3 lakhs was to be paid by the respondent to the appellant authorities in 10 half yearly instalments along with interest @ 10% per annum. There was a condition in the auction sale that in case of default in payment, the respondent had to pay interest @ 10% per annum on the unpaid amount and it was also open to the appellant to

impose further amount of penalty and to resume possession of the booth.

5. It is an admitted fact that the respondent committed several irregularities in making payment of the remaining amount. As he did not pay the remaining instalments, he was called upon to pay the same along with interest @ 18% per annum, compounded quarterly. In the aforesaid circumstances, the respondent had filed a suit challenging the validity of the action of the appellant of charging 18% compound interest and resumption of the booth.

6. It was mainly contended in the suit filed by the respondent that it was not open to the appellant to charge 18% compound interest. According to the respondent, the appellant could have charged only 10% interest on the delayed payments.

7. After considering relevant evidence, the trial court had decreed the suit, especially on the ground that it was not open to the appellant to charge 18% compound interest.

8. Being aggrieved by the final outcome of the suit, the appellant had filed first appeal, but the same had been dismissed.

9. In the aforestated circumstances, the appellant had filed Regular Second Appeal No.790 of 2008 before the High Court.

10. After considering the facts and submissions made by the learned counsel, the High Court dismissed the second appeal by observing that the appellant was entitled to charge only 10% interest and not 18% interest compounded quarterly, as demanded by the appellant.

11. The learned counsel appearing for the appellant authority had submitted that though the respondent had succeeded in the suit as well as in the first appeal and the second appeal, till the date of admission of the present appeal, the respondent had not made payment and it had also been submitted that the respondent's bona fides were doubtful.

12. In the aforestated circumstances, so as to see whether the respondent was in fact interested in retaining the booth in

question, this Court had passed an order on 17th February, 2014, directing the appellant as well as the respondent to place on record their calculations with regard to the amount payable by the respondent on the basis of interest @ 10% per annum on the unpaid instalments. In pursuance of the aforestated direction, the appellant had given a statement giving details about the amount payable by the respondent with 10% interest on the unpaid instalments. The respondent had been directed to make the payment from time to time so as to know his bona fides.

13. Finally, on 5th September, 2014, this Court had passed an order directing the respondent to pay at least Rs.13 lakhs before 10th October, 2014 and the said amount was, in fact, much lesser than the amount which was payable by the respondent even as per his own statement of accounts.

14. In spite of the aforestated direction, the respondent did not pay any amount towards the unpaid instalments and interest thereon.

15. With the passage of time, value of the property has increased substantially and it is clear that the respondent is not inclined to pay the unpaid amount along with interest thereon even at the rate of 10% per annum, which was agreeable to him. It is also an admitted fact that without taking any permission from the concerned authorities, the respondent has put up construction on the booth in question. In the aforesaid circumstances, it had been submitted by the learned counsel appearing for the appellant that the impugned order passed by the High Court is unjust and improper for the reason that the respondent had not even paid the amount payable by him, though several opportunities had been given to him. He had further submitted that as the respondent had not paid the amount, the appellant had a right to recover possession of the booth in question but the appellant could not take possession due to interim orders passed by the Courts below. He had, therefore, submitted that the impugned judgment deserves to be quashed and set aside.

16. On the other hand, the learned counsel appearing for the respondent had expressed financial difficulties of the respondent and submitted that he was prepared to make some payment on account, though it could not be denied by the learned counsel appearing for the respondent that the appellant was lawfully entitled to take possession of the booth in question on account of non-payment of the unpaid instalments and interest thereon. He had, therefore, submitted that in the interest of justice, the appeal should be dismissed and some more time should be granted to the respondent to make the payment.

17. We have heard the learned counsel for the parties at length and have considered the facts of the case. After hearing the concerned counsel and looking at the facts of the case, we find that it is an admitted fact that the respondent did not make payment of the unpaid instalments and also that the appellant has a right to resume possession of the booth in the event of non-payment of the auction price of the booth. The auction had taken place in September, 1988. The balance

amount of Rs.3 lakh was to be paid in ten half-yearly instalments. Hence, the entire amount ought to have been paid within five years thereafter i.e. by the end of 1993.

18. Even if we come to a conclusion that the High Court was right in not permitting the appellant to recover compound interest @ 18% per annum, it is an admitted fact that the respondent did not pay interest even @ 10% per annum, to which he could not have objected.

19. In spite of the fact that the amount was to be paid before 1993, even today in 2014, neither the respondent has paid the unpaid amount along with interest thereon, nor has he shown willingness to make the payment when ample opportunities were given to him by this Court for making payment along with interest @ 10% per annum on the amount due and payable.

20. The above facts clearly show that the respondent is not having bona fide intention and is merely trying to remain in possession without making payment of the bid amount, which he had agreed to pay. It is not in dispute that the appellant

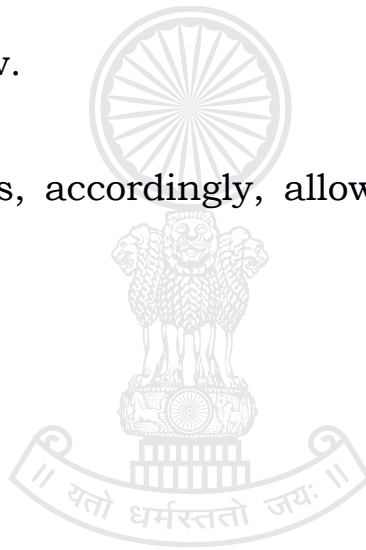
authority is entitled to take possession in the event of non-payment of the entire price of the booth, which the respondent, as an auction purchaser, had agreed to pay. Thus, the respondent has been committing default continuously. The respondent has also put up illegal construction on the booth/land allotted to him without taking any permission from the concerned authority.

21. Looking at the fact that the appellant is entitled to resume possession of the booth on account of non-payment of the price, but still the respondent is in possession of the same.

22. Though sufficient opportunities were given to the respondent to make payment of the price, the respondent has not paid the same. Hence, in our opinion, the Courts below had become more lenient than necessary towards the respondent by permitting him to retain possession and make payment along with 10% interest on the amount due and payable by him.

23. Upon looking at the overall facts, in our opinion, it would not be proper to grant any further accommodation to the respondent, who has admittedly not paid the amount due and therefore, we allow the appeal by quashing and setting aside the orders passed by the courts below. It would be open to the appellant to take possession of the booth in question in accordance with law.

24. The appeal is, accordingly, allowed with no order as to costs.



.....J
(ANIL R. DAVE)

JUDGMENT

.....J
(KURIAN JOSEPH)

.....J
(R.K. AGRAWAL)

NEW DELHI;
OCTOBER 29, 2014.