

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd May, 2013.

+ **CS(OS) 1659/2010**

ANOOP MADAN **Plaintiff**

Through: Mr. Sakal Bhushan, Advocate.

Versus

DENA BANK **Defendant**

Through: Mr. Sanjeev Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

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1. The plaintiff has instituted this suit for recovery of Rs.22,50,000/- with past, *pendente lite* and future interest @ 12% per annum till the date of actual realization.

2. It is the case of the plaintiff in the plaint:

(i) that the defendant Dena Bank had got published the Sale Notice dated 19th January, 2010 with respect to the secured asset namely B-814 A, RIICO Industrial Area, Phase-II, Bhiwadi, Rajasthan;

(ii) that one of the terms of the said Sale Notice *inter alia* was that statutory and other dues payable and due on the secured asset shall be

borne by the buyer;

(iii) that the plaintiff submitted his bid dated 20th January, 2010 for Rs.90 lakhs along with an Earnest Money Deposit (EMD) of Rs.9 lakhs but the said bid was conditional since the plaintiff had introduced a condition therein that his liability will be limited to payment of the bid amount and any amount owed to other authorities i.e. Central Excise Department or the Department of Sales Tax or any other agency prior to the date of sale, shall not be covered by the plaintiff;

(iv) that the said conditional bid of the plaintiff was accepted by the defendant Bank on 27th January, 2010; accordingly, the plaintiff deposited a further sum of Rs.13,50,000/- with the defendant Bank to make up a total deposit of 25% of the bid amount;

(v) thereafter the plaintiff received letter dated 27th January, 2010 from the defendant Bank again stating that the statutory and other dues payable and due on the secured asset shall be borne by the plaintiff;

(vi) that the aforesaid was in contradiction to the conditional bid submitted by the plaintiff and accepted by the defendant Bank and in

pursuance whereto the plaintiff had deposited a further sum of Rs.13,50,000/-;

(vii) that the plaintiff visited the defendant Bank on several occasions for withdrawal of the aforesaid condition, but to no avail and ultimately the plaintiff vide letter dated 19th February, 2010 called upon the defendant Bank to refund the money but the defendant Bank in its reply dated 6th March, 2010 avoided the issue;

(viii) that the plaintiff got legal notice dated 18th March, 2010 issued calling upon the defendant Bank to refund the amount of Rs.22,50,000/- deposited by him and to which a reply dated 22nd March, 2010 was given by the defendant Bank, leading the plaintiff to institute this suit for recovery.

3. The defendant Bank has contested the suit by filing a written statement pleading:

(a) that at the time of accepting the bid of the plaintiff, the defendant Bank had issued a letter dated 27th January, 2010 whereby confirming the sale in favour of the plaintiff and the plaintiff had accepted all the terms and conditions of the sale;

(b) that the defendant Bank had never given any assurance to the

plaintiff, neither at the time of accepting his bid nor subsequently, that the liability of the plaintiff shall be limited to the bid amount only;

(c) that it was a clear condition of advertisement of sale that the statutory and other dues shall be borne by the buyer;

(d) that the defendant Bank had never accepted the conditional bid of the plaintiff and the letter dated 27th January, 2010 was issued to the plaintiff at the same time when the plaintiff deposited Rs.13,50,000/-;

(e) that the sum of Rs.13,50,000/- was accepted by the defendant Bank in terms of the advertisement of sale and there was no question of the defendant Bank agreeing to any other condition.

4. No replication has been filed by the plaintiff.

5. On the pleadings of the parties, the following issues were framed on 3rd February, 2012:

“1. Whether the plaintiff is entitled to recover an amount of Rs.22,50,000/- from the defendant? OPP

2. Whether the plaintiff is entitled to any interest, if so at what rate and for what period and on what amount? OPP

3. Relief.”

6. The plaintiff has thereafter filed I.A. No.19248/2012 under Order XII

Rule 6 of Civil Procedure Code (CPC), 1908 and to which a reply has been filed by the defendant Bank.

7. During the hearing of the aforesaid application on 21st March, 2013, it was the contention of the counsel for the plaintiff that the plaintiff is entitled to a decree under Order XV of CPC also inasmuch as no oral evidence is required and the suit can be decided on the basis of the admitted documents. The counsel for the defendant Bank also agreed to the said course of action. The counsels were thus heard finally on the suit including on the issue framed as to interest, and judgment reserved.

8. Since the parties have done away with oral evidence and agreed to decision on the basis of the admitted documents, it is relevant to set out the relevant portions of the documents.

9. The defendant Bank had vide Sale Notice dated 19th January, 2010 scheduled the auction of property No.B-814 A, RIICO Industrial Area, Phase-II, Bhiwadi, Rajasthan on 27th January, 2010 at its office at Rajendra Place, New Delhi at 3.00 PM and had invited in sealed cover offers for purchase of the said property fixing the Reserve Price at Rs.85 lakhs. The relevant conditions mentioned in the Sale Notice were as under:

“1.....

2. The intending bidders should send their sealed cover along with an EMD of Rs.8.50 Lakh (Refundable without any interest to unsuccessful Bidders) by way of demand draft drawn in favour of Dena Bank, payable at New Delhi. The amount of EMD paid by successful bidders shall be adjusted towards the sale price.

3....

4. The sealed offers will be opened by the undersigned at Rajendra Place, Branch on 27/01/10 at 3.00 PM.

5. After opening the tenders, the intending bidders may be given an opportunity at the discretion of the authorized officer to have *inter se* bidding amongst them to enhance the offer price.

6. The highest bid will be subject to approval of the secured creditor/Authorized officer.

7. On completion of the auction, the successful purchasers shall deposit 25% (less the EMD amount paid) of the sale price immediately and balance 75% within 15 days failing which the Bank shall forfeit all the amount already paid/deposited by the purchaser in default payment, the property shall at the discretion of Authorized Officer/secured Creditor be sold to second highest bidders or resold and the defaulting purchaser shall not have any claim.

8.....

9. Any statutory and other dues payable and due on the secured Asset shall be borne by the buyer.

10....

The offers not confirming to the terms of sale shall be rejected.”

10. The offer dated 20th January, 2010 of the plaintiff for Rs.90 lakhs (Ex.P-1) comprises of a single sheet letter and besides enclosing a demand draft of Rs.9 lakhs stipulated as under:

“1.....

2. And a part payment of Rs.13.50 lacs will be paid to you on 27th January provided you accept our deviation that we will make balance payment on or before 25.03.2010. Otherwise you will return our 9.00 lac on same day.

Also with an assurance that our liability will be limited to the payment of the above said amount & the dues to RIICO & registry, any amount owed to any other authority i.e. Central Excise Department or the Department of Sales Tax or any other agency prior to the date of sale shall not be covered under our liability of payment for the complete ownership of the said property.”

11. The defendant Bank has filed Minutes of Auction dated 27th January, 2010 and which were admitted by the plaintiff during admission/denial of documents and proved as Ex. D-1. The said minutes record as under:

“It is pertinent to note here that twice the sale of the secured assets of M/s Hathway Systems (India) Pvt. Ltd. were conducted as per laid down procedure of SARFAESI Act, 2002, on 20.03.2009 in pursuance of Sale Notice dated 12.02.2009 published in The Statesman & Rajasthan Patrika and again sale was conducted on 25.08.2009 in pursuance of Sale Notice dt. 18.07.2009 published in The Statesman and Haribhumi. However, the secured assets was not sold on both the times as no bidders came on the date of sale.

There was only one bid namely Mr. Anoop Madan, Proprietor, M/s Rollcon Industries who participated in the auction dt. 27.01.2010. Mr. Anoop Madan, Proprietor, M/s. Rollcon Industries in this regard signed the attendance sheet. The Reserve Price is Rs.85,00,000/- (Rupees Eighty Five Lacs Only). Mr. Anoop Madan, Proprietor, M/s Rollcon Industries had submitted his bid vide letter dated 20.01.2010 along with EMD amount of Rs.9.00 lacs (Lacs) vide Demand Draft bearing

No.675302 dated 19.01.2010 as he had quoted his bid for Rs.90.00 lacs (Rupees Ninety Lacs Only). Mr. Anoop Madan, Proprietor, M/s Rollcon Industries further submitted in his letter dt. 20.01.2010 that he shall be able to deposit remaining 75% of the sale price i.e. Rs.67.50 lacs (Rupees Sixty Seven Lacs Fifty Thousand Only) on or before 25.03.2010 in lieu of fifteen days from the date of sale.

As there is only bidder so we have acceded to his request for deposit of remaining 75% of the sale price i.e. Rs.67.50 lacs (Rupees Sixty Seven Lacs Fifty Thousand Only) on or before 25.03.2010 in lieu of fifteen days from the date of sale, after accepting following Demand Draft/pay Order:-

Thus Mr. Anoop Madan, Proprietor, M/s Rollcon Industries had deposited 25% of the sale price i.e. Rs.22.50 lacs (Rupees Twenty Two Lacs Fifty Thousand Only) and the sale was confirmed in his favour subject to the deposit of remaining 75% of the sale price i.e. Rs.67.50 lacs (Rupees Sixty Seven Lacs Fifty Thousand Only) on or before 25.03.2010.”

12. The defendant Bank also issued a letter dated 27th January, 2010 to the plaintiff proved as Ex.D-2 *inter alia* stating as under:

“This has reference to your bid vide letter dt. 20.01.2010 for the subject property, in pursuance of Sale Notice dt. 19.01.2010 published in two newspapers namely The Statesman and Rajasthan Patrika.

.....

The undersigned confirmed the subject sale in your favour and also acceded to your request for making payment of the Balance 75% i.e. Rs.67.50 Lacs (Rupees Sixty Seven Lacs Fifty Thousand Only) of the sale price on or before 25.03.2010 in lieu of fifteen days from the date of sale, subject to the following stipulations:-

1) The Sale Certificate of the subject property which are

under the physical possession of the Authorised Officer of the Bank under the SARFAESI, 2002 Act is to be issued strictly on “As is where is Basis”.

2) You are supposed to deposit remaining 75% i.e. 67.50 Lacs (Rupees Sixty Seven Lacs Fifty Thousand Only) of the sale price on or before 25.03.2010, failing which the Bank shall forfeit all the amount already paid/deposited by you. In default of payment, the property shall at the discretion of Authorized officer/secured creditor to be re-sold and you shall not have any claim.

3) You shall bear the expenses on Stamp duty and Registration charges, if any.

4) Any statutory and other dues payable and due on the secured Asset shall be borne by you.”

13. The plaintiff has filed photocopy of the letter dated 19th February, 2010 and the reply thereto of the defendant Bank dated 6th March, 2010 referred to in the pleadings and though no admission/denial of the said documents have been done, probably owing to the same being photocopies, but the defendant Bank in its written statement has not denied the said pleas and thus in my opinion the said document can also be read in evidence. The plaintiff vide the letter dated 19th February, 2010 stated that he had upon acceptance of his conditional bid deposited Rs.13,50,000/- and “thereafter” had received the letter dated 27th January, 2010, in which Clause 4 as under was reiterated:

“Any statutory and other dues payable and due on the secured asset shall be borne by you”.

This letter/clause was stated to be in contradiction to the conditional offer dated 20th January, 2010, and the defendant Bank was called upon to refund the money within seven days of receipt of this letter. The defendant Bank vide its reply dated 6th March, 2010 informed the plaintiff that it was unable to accede to the request of the plaintiff for refund and called upon the plaintiff to deposit the balance sale consideration of Rs.67.50 lakhs on or before 25th March, 2010.

14. Need is not felt to reiterate the contents of the legal notice dated 18th March, 2010 and reply dated 22nd March, 2010 thereto.

15. The contention of the counsel for the plaintiff is that the Sale Notice dated 19th January, 2010 was an invitation to offer; that the bid dated 20th January, 2010 was an offer of the plaintiff; the same was accepted on the fall of hammer and upon which acceptance, the plaintiff deposited Rs.13,50,000/-; on acceptance of the offer, the defendant Bank is deemed to have accepted the conditional offer of the plaintiff and could not have thereafter reneged from the same. It is contended that the defendant Bank having reneged from the contract, the plaintiff is entitled to refund of the monies paid and the defendant Bank is not entitled to forfeit the same in

terms of the conditions of the Sale Notice.

16. On the contrary, the contention of the counsel for the defendant Bank is that though the plaintiff had given a conditional offer but as is evident from the minutes of the auction (Ex.D-1), the plaintiff did not insist on the condition and sought variation only to the extent of extension of the time for making the balance payment and which was accepted; that the letter dated 27th January, 2010 is not issued “thereafter” as the plaintiff has sought to portray but is of the same date as of the opening of the bid. He has thus contended that a case for forfeiture in accordance with the terms of the Sale Notice is made out.

17. I have considered the rival submissions and at the outset clarify that the parties, after the framing of issues and being put to trial having agreed to decision on the basis of the documents and agreement qua which procedure is permissible in law (Reference in this regard can be made to ***Saheb Ram Vs. Ram Newaz*** AIR 1952 All. 882 and ***Florabel Skinner Vs. Jai Bajrang Kala Mandir Ram Lila Mandal*** MANU/PH/0326/1979 (FB) where relying on Section 20 of the Evidence Act, the procedure adopted by the parties of decision on the basis of admission by the other party was held to be lawful) the suit has to be decided within the parameters of the agreed procedure

only i.e. on an interpretation of the documents.

18. The adage, parties may lie but the documents do not lie, is of the nature of a *classicum*. The position as emerging from the documents in this case, in my opinion does not admit of any doubt whatsoever. The Sale Notice, which the counsel for the plaintiff has correctly contended, is an invitation to offer, clearly provided that offers not confirming to the terms laid down therein shall be rejected. It was thus not open to anyone to make an offer inconsistent with the terms and conditions laid down in the said invitation to offer. The plaintiff still did so.

19. Upon the attention of the counsel for the plaintiff being invited to the clause aforesaid in the Sale Notice, his contention was that the only consequence of his offer inconsistent with the Sale Notice could be its rejection; from the very fact that his offer was not rejected, rather accepted as is evident from the acceptance by the defendant Bank of the further sum of Rs.13,50,000/- from him, the defendant Bank is deemed to have agreed to the conditional offer and the contract which came into existence between the parties was the contract with the condition imposed by the plaintiff and the defendant Bank being in breach thereof, is not entitled to forfeiture of the amount paid.

20. The argument though attractive on the face, is factually not tenable. The offers/bids were invited in sealed cover. It can thus safely be assumed that the offer dated 20th January, 2010 of the plaintiff comprising aforesaid of a single sheet was contained in a sealed envelope. The said sealed envelopes were to be opened only on 27th January, 2010 at 3.00 PM. The defendant Bank itself till the stage of opening of the sealed envelope submitted by the plaintiff had no occasion to know that the offer of the plaintiff was a conditional one and was well-neigh entitled to presume that the offer contained in the sealed envelope was in accordance with the Sale Notice. Had the plaintiff been desirous of making a conditional offer, the plaintiff ought to have besides the sealed envelope containing its bid and EMD, given an open letter to the defendant Bank setting out its condition and only in which eventuality, the defendant Bank prior to the opening of the sealed offers/bids could have had notice of the bid/offer of the plaintiff being not confirming to the terms of the Sale Notice and would have had the opportunity to reject the same.

21. As the Minutes of Auction show, only one bid was received i.e. of the plaintiff. Thus, the plaintiff would have been the only person at the office of the defendant Bank at the stipulated time when the bids were opened.

The defendant Bank is supposed to have at least then known that the bid of the plaintiff was a conditional one. However, on 27th January, 2010 at/after 3.00 PM, the following events occurred:

- (i) opening of the bid;
- (ii) drawing of the minutes of the auction;
- (iii) issuance and delivery of the letter dated 27th January, 2010 by the defendant Bank to the plaintiff.

22. The fulcrum of the argument of the counsel for the plaintiff is the acceptance of the conditional bid preceding the issuance of the letter dated 27th January, 2010. It is precisely for that reason that the plaintiff in his pleadings uses the word “thereafter”. What falls for determination is, whether the said contention of the plaintiff is believable/can be accepted.

23. At the outset, the contention of the plaintiff that the bid stood accepted on the fall of hammer is again contrary to the sale condition supra, of the highest bid being subject to approval of the Authorized Officer of the defendant Bank. The bid was thus not to be accepted on the fall of hammer but only on approval of the Authorized Officer of the defendant Bank.

24. It is for such approval that the Minutes of the Auction have been drawn up. The said minutes though not signed by the plaintiff have been

admitted by the plaintiff. The said minutes, though record the request of the plaintiff for extension of time for deposit of the balance sale consideration till 25th March, 2010 instead of within 15 days of 27th January, 2010 and which was also a condition of the plaintiff in his offer dated 20th January, 2010, but do not record the other condition of the plaintiff in his offer, of being not liable for statutory dues. Since the plaintiff as per the Sale Notice was required to be present at the time of opening of the bids, for *inter se* bidding if any required and has admitted such presence inasmuch as the amount of Rs.13,50,000/- was paid on the same day, it follows that the minutes aforesaid were drawn in the presence of the plaintiff. The admission, during admission/denial of documents by the plaintiff, of the said minutes is also indicative thereof. Thus, the argument of the plaintiff of the defendant Bank having accepted his conditional offer cannot be believed.

25. Not only so, the letter dated 27th January, 2010 also was not issued “thereafter” but before the plaintiff left the office of the defendant Bank. The said letter is in fact the approval of the bid of the plaintiff by the Authorized Officer of the defendant Bank. The said acceptance again, save for varying the date of payment of the balance sale consideration, reiterates

the other conditions of the Sale Notice. The plaintiff is shown to have personally accepted the said letter on 27th January, 2010 itself.

26. The chronology of events in the office of the defendant Bank on 27th January, 2010 is revealed as, (i) opening of the bids; (ii) the plaintiff agreeing to give up the condition in his bid of being not liable for statutory dues and the defendant Bank agreeing to extend the time for payment of balance sale consideration; (iii) the Minutes of Auction being drawn up; and, (iv) the letter dated 27th January, 2010 being issued by the defendant Bank to the plaintiff.

27. Had the plaintiff not given up the condition put in the bid, of not being liable for statutory dues and/or agreed that the statutory dues shall be borne by him, the plaintiff would have neither signed the letter dated 27th January, 2010 nor left the office of the defendant Bank without the demand drafts for Rs.9 lakhs and Rs.13,50,000/-. It is rather the letter dated 27th January, 2010 signed both by the plaintiff as well as the defendant Bank which constitutes the contract between the parties and as per which contract, the statutory dues were payable by the plaintiff and the amount of Rs.22,50,000/- deposited by the plaintiff to be forfeited upon the failure of the plaintiff to deposit the balance sale consideration.

28. The plaintiff appears to have changed his mind subsequently. It is significant that the first communication from the plaintiff after 27th January, 2010 is of 19th February, 2010. The plaintiff therein as well as in the plaint has falsely represented that the letter dated 27th January, 2010 was received by him “thereafter”. As aforesaid, the said letter was personally received by the plaintiff on 27th January, 2010 itself and signed in acceptance of the terms therein.

29. The right of the defendant Bank to forfeit is otherwise not under challenge and neither any pleading has been made by the plaintiff in that regard nor any issue claimed.

30. There is thus no merit in the suit; the same is dismissed; however in the circumstances and considering that the suit has been disposed of expeditiously, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

MAY 22, 2013

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