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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

ORDINARY ORIGINAL CIVIL JURISDICTION

IA NO. GA/18/2022

In

CS/286/1976

BHUPESH KUMAR MAHAWAR

Vs

MAHABIR PRASAD MAHAWAR & ORS

IA NO. GA/24/2025

In

CS/286/1976

BHUPESH KUMAR MAHAWAR

Vs

MAHABIR PRASAD MAHAWAR & ORS.

BEFORE:

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date: 6th January, 2025.

Appearance:

Mr. Chayan Gupta, adv.

Mr. Ovik Sengupta, Adv.

Mr. Saptarshi Bhattacharjee, Adv.

...for the plaintiff.

Ms. Madhurima Haldar, Adv.

Mr. Sunil Kr. Singhanian, Adv.

...for the defendants.

Mr. Jayanta Kumar Sanyal, Adv.

Mr. Subhankar Chakraborty, Adv.

...for the Joint Receivers.

Mr. Mainak Bose, Senior Adv.

Mr. Rishabh Karnani, Adv.

Mr. Anurag Bagaria, Adv.

...for the applicant in GA/24/2025.

The Court: Report of the Joint Receivers is taken on record.

GA/24/2025

By the present application, the applicant has sought for following

orders:-

- a) *The applicant be given Leaves to intervene in C.S. No. 286 of 1976 for the purpose of sale of assets and properties;*
- b) *The Applicant be given leave to file this application with short cause title;*
- c) *The sale notice dated 28th November, 2024 published by the Joint Receivers be set aside and/or quashed;*
- d) *Stay of all further proceedings pursuant to and in terms of the sale notice dated 28th November, 2024;*
- e) *An order be passed directing a fresh publication for Sale of the assets and properties with particulars, details and reserve price;*
- f) *Alternatively, the Application be provided the details of the assets and properties that are being sought to be sold and an opportunity be given to the Applicant to make an offer by accepting the Earnest Money Deposit of Rs. 10 lacs;*
- g) *The Learned Joint Receivers be also directed to provide inspection, as also the particulars and details of the assets and properties which are being sought to be sold;*
- h) *Ad interim orders in terms of prayers above;*
- i) *Such further and/or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.*

It is contended in the application that the publication for sale of the properties has inherent defects due to which the applicant being bona fide purchaser could not participate in the bid and deposit earnest money of Rs. 10 lacs.

Mr. Mainak Bose, learned Senior Advocate appearing for the applicant submits that the sale advertisement is bereft of specification of the properties, to be precise it does not disclose any immovable property being put up for auction sale and hence it is ambiguous. That apart, no reserve price for sale of the properties has been disclosed in the advertisement for sale, which is a necessary and mandatory requirement for sale by auction. To buttress his contention, he relies on the following decisions of the Hon'ble Supreme Court:

- (i) **Allahabad Bank and Others versus Bengal Paper Mills Co. Ltd. and Others** reported in **(1999) 4 SCC 383**,
- (ii) **Union Bank of India versus Official Liquidator H.C. of Calcutta and Others** reported in **(2000) 5 SCC 274** and
- (iii) **Anil Kumar Srivastava versus State of U.P. and Another** reported in **(2004) 8 SCC 671**.

In light of his aforesaid submissions, he prays that the sale notice dated 28th November, 2024 be set aside and direction be issued for fresh publication for sale of the assets and properties with particulars, details as well as reserve price.

On the contrary Mr. Chayan Gupta, learned Advocate appearing for the plaintiff submits that pursuant to the publication for sale of the properties, about 60 numbers of parties inspected the property out of which 11 have submitted their bids, which clearly shows that there was no such ambiguity in the sale notice. He further indicates that pursuant to the order of this Court, seven days' time was given to the interested parties to submit their objection, if any. The applicant did not raise any objection before the Joint Receivers of their grievances raised in the present application. Relying on the decision of the Hon'ble Supreme Court passed in **Haryana State Agricultural Marketing Board and Others versus Sadhu Ram** reported in **(2008) 16 SCC 405**, he submits that even if the reserve price is not disclosed in the advertisement for sale, that does not amount to any unfair act on the part of the Joint Receivers.

Ms. Madhurima Halder, learned advocate appearing for the defendants opposes the contentions made by the applicant in the instant application.

Mr. Rohit Banerjee, learned Advocate appearing for the Joint Receivers submits that the Joint Receivers have duly complied the orders of this Court and as per the report, 60 parties inspected the property out of which 11 parties have submitted their bids and the quoted value in the bids are much higher than the valuation arrived at by the Valuer of Rs.9,04,44,000/-. He further indicates that Serial No. 11 of the report is highest bidder. The applicant has not raised any objection before the Joint Receivers of the grounds as raised this day.

In reply, Mr. Bose, learned Senior Advocate appearing for the applicant indicating to the decision of Hon'ble Supreme Court in *Sadhu Ram (supra)* has observed that in case of non-disclosure of the reserve price the only course open to the Court is to cancel such auction.

Having heard the learned advocates, following issues fall for consideration of this Court.

Firstly, whether there is ambiguity in the publication for sale of the properties?

Secondly, whether the publication for sale is bad for non-disclosure of the reserve price?

With regard to the first issue, upon cursory going through the advertisement for sale dated 29th November, 2024, it is found that the

publication has been made for sale of the property including steel structures and other miscellaneous goods comprised within Khasra Nos. 1856, 1889, 1890, 1896, 1896, 1897, 1898 and 1898/1979 at Station Road, Post Office-Rajgarh, District-Alwar, Rajasthan. Therefore, the argument advanced on behalf of the applicant that immovable property since has not been mentioned in the advertisement makes the publication for sale ambiguous, falls short of merit.

The other aspect which has been raised in the application that since no reserve price of the properties put-up sale was disclosed in the advertisement, hence the same is bad in law. It is true that the publication of sale does not disclose the reserve price. Now it is to be examined whether such non-disclosure of reserve price makes the publication of sale bad in law.

The Hon'ble Supreme Court in *Sadhu Ram (supra)* at paragraph 18 observed as follows:-

"18. Let us now take up the other aspect of the matter. As noted hereinafter, the reserve price was not shown in the public notice and therefore, the respondents had no knowledge of the reserve price. Even assuming that the reserve price had to be given in the public notice, then also, we are of the view that the best course for the High Court would be to cancel the entire auction in view of the decision of this Court in Tata Cellular v. Union of India rather than substituting its own opinion by directing allotment of alternative plots. It is, therefore, difficult to accept the views expressed by the High Court that since reserve price was not known to the respondents and they were found to be the highest bidders in the said auction, they have acquired a right to get the allotment of alternative plots and the appellants had no authority to reject the highest offers given by the respondents or to cancel the auction itself. Since the entire auction was cancelled, we do not find any justification how the High Court could pass an order directing allotment of the alternative plots on the same terms and conditions when, after cancellation, the second auction was held in which the price fetched was much higher than the offers made by the respondents. That apart, we do not find anything unfair in not disclosing the reserve price. It is common knowledge

that when reserve price is disclosed, the bidders often form cartels and bid at or around the disclosed price, though the market price is much higher. We, therefore, do not agree with the High Court that the appellants had acted in an unfair manner in not disclosing the reserve price at the time of inviting tenders or even at the time of holding the auction.”

Bearing in mind the aforesaid observations, this Court is of the opinion that even if the reserve price is not disclosed, that does not tantamount to unfair act. Further the Hon'ble Supreme Court while dealing with the aspect has taken into consideration that when a reserve price is disclosed, the bidders often form cartels and bid in and around the reserve price, though the market price is much higher. In the case at hand, it is relevant to note that the highest price bid is Rs.27,75,000,00/- which is much higher than the valuation assessed by the valuer at Rs.9,04,44,000/-.

The decisions of the Hon'ble Supreme Court in *Bengal Paper Mills Co. Ltd. (supra)* and *Official Liquidator H.C. of Calcutta (supra)* cited on behalf of the applicant refer to winding up proceedings and auction sale of company's assets. In *Anil Kumar Srivastava (supra)*, a scheme for sale of about 54,000 sq.mt. for construction of a shopping mall in Noida was floated and it was alleged that the impugned scheme was awarded, without precedent, at 1/4th of the prevailing market price and by fixing the reserve price at abysmally low, throw away price. Whereas the case in hand relates to suit for dissolution of partnership firm and partition and distribution of the assets. Thus, the nature of the proceedings in the cited decision as well as facts involved is distinguishable from the case at hand.

Accordingly, this Court is unable to accept such contention of Mr. Bose, learned Senior Advocate appearing for the applicant that non-disclosure of reserve price makes the publication for sale bad in view of the observation of Hon'ble Supreme Court in the said judgment of *Sadhu Ram (supra)*.

In view of the above discussion, the application being GA/24/2025 stands dismissed.

Since no affidavit has been called for, the allegations made in the application are deemed to be not admitted.

GA/18/2022

Perused the report of the Joint Receivers.

It is found that one Mr. Kamlesh Sharma appearing at Serial No.11 in paragraph 3 of the report has bid the highest amounting to Rs.27,75,00,000/-.

Accordingly, the sale of the properties-in-question is confirmed in favour of Mr. Kamlesh Sharma of 1/101, Shanti Kunj, Alwar, PIN – 301001, appearing at Serial No.11 of the report.

The learned Joint Receivers are directed to refund the demand draft of other 10 bidders of Rs.10 lakh each.

Learned Joint Receivers are granted liberty to deposit the amount of Rs.10 lakh in their account deposited by Mr. Kamlesh Sharma under Serial No.11 of the report. Mr. Kamlesh Sharma is directed to deposit the entire balance amount of offer price within one month from date of

communication of this order, failing which, the confirmation of the sale in favour of Mr. Kamlesh Sharma shall lapse.

Learned Joint Receivers are directed to communicate this order to Mr. Kamlesh Sharma.

Learned Joint Receivers, upon deposit of the aforesaid amount, shall execute and register the sale deed in favour of Mr. Kamlesh Sharma.

The learned Joint Receivers shall furnish a report on the returnable date.

It is informed that the remuneration of the Joint Receivers have not been paid as yet in terms of the order of this Court. Mr. Gupta, learned advocate for plaintiffs and Ms. Madhurima Halder, learned advocate for defendants undertake that the remuneration of the Joint Receivers will be paid within a short period of time.

List this matter after six weeks.

(BIVAS PATTANAYAK, J.)