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SLP(C)No. 13558 OF 2003  
ITEM No.209

Court No. 4

SECTION IX  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.13558/2003  
(From the judgement and order dated 24/07/2003 in CWP 4558/03  
of The HIGH COURT OF BOMBAY)

T.G. KRISHNAMURTHY

Petitioner (s)

VERSUS

IDBI & ORS.

Respondent (s)

(With prayer for interim relief)

( With Appln(s). for permission and exemption and for withdrawal of  
amount Rs.1.51 crores and office report)( For Final Disposal )

Date : 20/02/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner (s) Mr.Rakesh Dwivedi,Sr.Adv.  
Mr.Saket Bahuguna,Adv.  
Mr. Dinesh Kumar Garg,Adv.

For Respondent (s) Mr.A.Mariarputham,Adv.  
Ms.Aruna Mathur,Adv.for  
M/s Arputham,Aruna & Co.  
Mr. R.C. Kaushik,Adv.

Mr.DA Dave,Sr.Adv.  
Mr.Sumant Batra,Adv.  
Ms.Puja Jain,Adv.  
Ms.Tina Anand,Adv.

Mr.Harish N.Salve,Sr.Adv.  
Mr.T.Harish Kumar,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted. The appeal is disposed of.

(USHA BHARDWAJ)  
P.S. TO REGISTRAR

(MADHU SAXENA)  
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO...../2004  
(Arising out of S.L.P.(Civil) No. 13558 of 2003)

T.G. Krishnamurthy.....Appellant  
Versus  
IDBI & Ors. ....Respondents

O R D E R

Leave granted.

This appeal has been preferred from an order dismissing the writ petition filed by the appellant. The appellant is a Promoter and presently a Director of the Gangappa Paper Mills Ltd. The Company enjoyed certain credit facilities with the IDBI, the respondent No.1 before us. It is the IDBI's case that the appellant had also guaranteed the repayment of the dues of the Company. On the grounds that the company had defaulted in repaying the amounts due by it to IDBI, IDBI filed a suit in the Bombay High Court for recovery of its dues. An application was also filed for the appointment of a receiver to take possession of and sell the immovable assets of the Company which has been mortgaged by the Company to IDBI. An interim order was passed by the Bombay High Court granting such prayer. It is the appellant's case that subsequent to this order the appellant sought to resolve the dispute as to the outstanding dues of the Company to IDBI and to this end proposed a one time settlement. An application was also made by the applicant in connection with this one time settlement to the Bombay High Court. While matters stood thus, the suit was transferred in 2001 to the Debts Recovery Tribunal. We need not to go into the history of the settlement. It is enough to note that there was no settlement ultimately arrived at between the parties. By an order dated 5.9.2002 the Debt Recovery Tribunal passed an order for sale of the Company's properties after appointing a receiver to do so. The application of the appellant for recalling that order was rejected by the Debt Recovery Tribunal. The appeal was admitted and no interim order was granted. It was in these circumstances that the appellant filed a writ petition impugning the decision of IDBI to auction the properties of the Company.

After the SLP was entertained by this Court, this Court passed an order directing the status-quo on 28th July, 2003 to be maintained.

It was brought to this Court's attention on 4th August, 2003 that in the meanwhile an order of sale had been passed by the Debt Recovery Tribunal on IDBI's application and the sale has been fixed on 11th August, 2003. As the sale had been so fixed we allowed the auction to be proceeded with. However, it was made clear by this Court that no final decision should be taken regarding the acceptance of the bid without the permission of this Court. The appellant was given liberty to bid during the auction.

The auction has since been held on 8th August, 2003 and the highest bid was given by one P.C. Jain for Rs.6.2 crores. The appellant had bid Rs.6 crores and had also deposited Rs.1.5 crores by way of earnest money. The appellant stated that he was willing to match the offer of P.C. Jain on the same terms and conditions. We therefore directed notice to be issued to P.C. Jain. However, in order to test the bonafides of the appellant, we directed him to deposit the same amount by way of earnest. The appellant has deposited an amount of Rs.1.51 crores in this Court. The Registry has been directed by us to invest the same in a short term fixed deposit and to hold the fixed deposit receipt subject to further orders of this Court.

Subsequently P.C. Jain has been added as a party to these proceedings. However, there has been no confirmation of the sale in his favour as there is no formal acceptance of his offer till now because of the operation of our earlier order dated 4th August, 2003.

It appears from the facts, as stated, that IDBI is satisfied with the sale price of Rs.6.2 crores for the assets of the Company. Without resolving the doubts which we have regarding the power of the Debt Recovery Tribunal to sell the property even before the final decree is passed, we dispose of the appeal in the facts and circumstances of this case by accepting the appellants' offer to match the bid of P.C. Jain provided the appellant makes payment of the balance amount of the amount of Rs.6.2crores less any amount that has already been paid by the appellant to IDBI within a period of 90 days from date. IDBI is permitted to withdraw the amount of Rs.1.51 crore deposited by the appellant on 2.12.2003. We make it clear that IDBI is also entitled to interest accumulated thereon and will adjust such accrued interest in pro tanto satisfaction of the sale price payable by the appellant to IDBI in terms of this order.

In default of the appellant putting in the balance amount within the aforesaid period, this acceptance shall stand cancelled and the offer of P.C. Jain will be accepted and the sale in his favour confirmed in terms of the conditions of sale. In the event, the appellant succeeds in paying the balance amount of the bid to IDBI the amount deposited by P.C. Jain towards the sale price shall be refunded to P.C. Jain together with any interest which may have accrued thereon. If the amount has not been invested in any bank or in any other fashion by IDBI, the appellant will pay the interest on such amount calculated at rates normally offered by Nationalised Banks for fixed deposits for the period that the amount has been lying with IDBI. In the event of default of payment of the balance amount by the appellant, the IDBI will be at liberty to forfeit the amount deposited by the appellant by way of earnest money pursuant to the earlier order of this Court. We make it clear that this Court has not gone into any of the issues pending decision before the Debt Recovery Tribunal.

.....J. (RUMA PA

L)

.....J. (S.H. KAPADIA)

New Delhi,  
20th February, 2004

