

IN THE HIGH COURT OF SINDH AT KARACHI

C P D - 2203 of 2017

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Muhammad Naqi Bari

vs.

The Government of Sindh and Others

For the Petitioner: Mr. M Saleem Thepdawala, Advocate

For the Respondents: Mr. Tahir Durani, State Counsel

Mr. Chaudhry Waseem
Official Assignee

Date of Hearing: 26.10.2018

Date of Announcement: 26.10.2018

JUDGMENT

Agha Faisal, J: The present petition was filed assailing the order of the learned Single Judge of this High Court, dated 09.03.2017, delivered in J C M 30 of 2011 ("**Impugned Order**").

2. The controversy leading up to the present petition may be encapsulated to state that the petitioner had submitted an auction bid for immovable property in liquidation proceedings and the said bid had been admittedly withdrawn prior to the acceptance thereof. The petitioner had already deposited a sum of Rs. 7,500,000/- with the Official Assignee and sought the return of the same, vide CMA No. 420 of 2016 preferred in J.C.M. No. 31 of 2011. The Impugned Order inter alia dismissed the petitioner's application and the pertinent constituent thereof is reproduced herein below:

“The auction purchaser’s amount of Rs.7.5 million lying with Official Assignee shall remain with Official Assignee and cost of last publication shall be borne out of this amount. Additionally, if next auction pursuant to sale proclamation fetches a lesser amount than the earlier, the difference between the two shall be secured from aforesaid amount. This is only tentative arrangement subject to further orders of this court to the effect of quantum of the cost/penalty to be imposed upon the auction purchaser for backing out from his commitment/offer. Mr. Munawwar Ghani seeks time to assist the Court in this regard on the net date so also other counsels. The cost of publication etc. for re-auctioning shall also be the responsibility of the present auction purchaser...”

3. Mr. M. Saleem Thepdawala, learned counsel for the petitioner, submitted at the onset that an objection had been raised by the office with respect to the maintainability of the present petition as it was averred that the present proceedings were required to be styled as an intra-Court appeal. Per learned counsel the issue of maintainability was resolved vide order dated 25.04.2017 and it had been verbally observed by the learned Divisional Bench that the petition may stand converted into an appeal and allowed, should the Court find itself in concurrence with the submissions of the petitioner on merit. The judgment in the case of *Asif Kudia vs. Messrs KASB Bank Limited and Others* (reported as 2014 CLD 1548) was cited as precedent wherein a similar conversion (albeit from an appeal to a Constitution petition) was allowed by a Division Bench of this Court.

4. It was argued that a bid can be withdrawn at any time before hammer falls and therefore the retention of the petitioner’s deposit, as sanctioned vide the Impugned Order, was not sustainable in law. Learned counsel placed reliance on the case of *Captain-PQ Chemical Industries (Pvt.) Limited vs. Messrs A.W.Brothers and Others* reported as 2004 SCMR 1956 (“**Captain-PQ**”) wherein it had been held that mere

floating of a bid, irrespective of the fact whether it is the highest or lowest, does not create a right in favor of the bidder hence the question of infringement does not arise. Learned counsel also relied upon the case of *Joravarmull Champalal vs. Jeygopaldas Ghanshamdas by his agent Mugduth and Others* reported as AIR 1922 Madras 486 ("**Joravarmull**") wherein it had been maintained that the person who bids at an auction does not conclude a contract but states an offer by which, until he withdraws it himself, he becomes legally liable for the amount of his bid, however, that until such bid is accepted it is open to the offerer to withdraw it and make it seem as if it had never been made.

5. Mr. Tahir Durani, State Counsel, along with Mr. Chaudhry Waseem, the Official Assignee, acquiesced to the proposition enunciated vide *Captain-PQ* and *Joravarmull* and submitted that since the petitioner's bid had been withdrawn prior to its acceptance, hence, the petitioner was entitled to the return of the deposit, subject to adjustment of the publication / republication costs. It was further submitted that they had no cavil to the conversion of the present petition into an appeal and for the same to be allowed to the extent of the return of the remaining constituent of the petitioner's deposit. A statement was presented in Court, which was taken on record, and it was stipulated therein that an amount of Rs.198,600/- had been incurred for the publication of the proclamations of sale etc. and that the said amount was recoverable from the petitioner. It was further expressed that the said respondents had no objection if the deposit of the petitioner, after deduction of the expenses incurred, was returned to the petitioner as the property in question had already be re-auctioned, conveyed and the issue was at rest.

6. In view of the foregoing, with the consent of the parties, the present petition is converted into a High Court Appeal and the Impugned Order is set aside to the extent stated hereinabove. The remaining deposit of the petitioner, amounting to Rs. 7,301,400/-, shall be returned to the appellant upon proper verification and in accordance with the law.

7. These proceedings, along with pending application, stand disposed of in terms herein above.

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