Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS (L) NO. 990 OF 2018
IN
EXECUTION APPLICATION (L) NO. 88 OF 2017
WITH
CHAMBER SUMMONS NO. 222 OF 2017
AND
COURT RECEIVER'S REPORT NO. 289 OF 2018

Vistra ITCL (India) Ltd	…Applicant/ Judgment Creditor
Versus	
Mighty Constructions Private Limited & Ors	…Respondents/ Judgment Debtors
And	
Sanjay S Bhosale & Anr	…Proposed Respondents

Mr JP Sen, Senior Advocate, *with Mr Tushad Kakalia, Mr DJ Kakalia, Raghavi Sharma, i/b Mulla & Mulla & Craigie Blunt & Caroe, for the Applicant/Judgment Creditor.*
Mr Ajay Jaiswal, *i/b Little & Company, for Respondents Nos. 1 and 2.*
Mr Harshad Pimple, *with Mr Sandip Patil, for MCGM.*
Ms Kavita Ambekar, *Ist Assistant to Court Receiver present.*

CORAM: G.S. PATEL, J
DATED: 26th October 2018

PC:-

1. The Decree Holder, Vistra ITCL (India) Limited ("**Vistra**"), has filed a further Affidavit dated 26th October 2018. In paragraph 5 of the Affidavit, Vistra prays for a downward revision of the reserve price of the mortgaged property. The earlier reserve price was Rs.12 crores. Mr Sen has instructions to leave the revised reserve price to the discretion of the Court. I do not think that it would be advisable to lower the price too much at this stage. There are in fact two distinct sets of properties. One set comprises of commercial spaces in the Universal Majestic Commercial premises. The other lot are two Garages Nos. 19 and 20. The parties are agreed that both properties will have to be sold together as a single lot although, for clarity, the physical areas will have to be shown separately in sq ft or sq mts.

2. Having regard to previous reserve price as also the valuation, I will presently fix a revised reserve price at Rs.9.5 crores. I have consciously taken this value because in the last round of sale by the Court Receiver, when the first reserve price was undisclosed, the only two bids received were for Rs.6.5 crores and Rs.2.6 crores, both far below the valuation and the then reserve price. I rejected both bids as being too low.

3. The 1st Defendant objects to this downward revision and says that the property is worth at least Rs.12.5 crores. That is noted. However, merely noting it is not good enough. The 1st Defendant cannot be a Judgment Debtor refusing to pay the Decree Holder and at the same time making submissions that will inevitably result in the property not being realized in execution. If the 1st Defendant believes that is the value the property must fetch, then the 1st Defendant must be held to that itself. It simply cannot be that the price is so high that it fetches no buyer and the 1st Defendant does not itself have to meet that price that the 1st Defendant itself suggests as correct. Accordingly, if any of the Judgment Debtors wish to bid for the property they are free to do so but for them there will be a special reserve price pegged at what they say is a fair price, viz., Rs.12.5 crores. This will be known as the special reserve price, and no Judgment Debtor will be allowed to bid at anything less than this price.

4. The Decree Holder is also entitled to bid for the property as one lot. The reserve price applicable to the Decree Holder will be the general reserve price of Rs.9.5 crores. If the Decree Holder is found to be the highest bidder, the Decree Holder is entitled to set off or adjust its decretal claim, in whole or in part, against the successful bid and have the bid marked satisfied to the extent of the successful bid amount.

5. The Receiver will ensure that in the course of the next sale, the other terms and conditions including as to the EMD and time for payment will remain unaltered, subject only to what is stated below.

(a) The areas of the commercial premises and the garages/parking spaces will be shown separately for greater clarity.

(b) The Court Receiver will allow EMDs to be drawn on any Nationalised or Scheduled Bank.

(c) Inspection of the premises and the documents will also be made available for a period of one week and not just for one day.

6. Liberty to apply.

(G. S. PATEL, J)