

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5471 OF 2005

Fairgrowth Financial Services Ltd.

.....Appellant

Versus

Custodian & Anr.

.....Respondents

W I T H

C.A.Nos.5788-5789 of 2005

J U D G M E N T

SHIVA KIRTI SINGH, J.

Civil Appeal No.5471 of 2005

1. Heard the parties. The appellant is a notified party under Section 3(2) of the Special Courts (Trial of Offences relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act'). Its tenancy rights over the premises bearing Flat No.2, situated on the ground floor of a building known as Krishna Mahal at 36, Marine Drive, D-Road, Mumbai belonging to respondent

no.2, the owner and landlord also came to be attached under the provisions of the Act. The respondent no.1 filed an application before the Special Court which was numbered as Miscellaneous Petition No.17 of 2004. He claimed that the flat which stood attached for the tenancy rights of the notified party be also dealt with and disposed of for the best available price for satisfying the liabilities of the appellant under Section 11 of the Act. That Miscellaneous Petition was entertained and it ultimately resulted in acceptance of highest offer of Rs.75 Lacs made by the landlord as it was the highest offer which could be obtained for surrender of the tenancy rights of the appellant. Under the orders of the Special Court respondent no.2 has deposited Rs.10 Lacs with a stipulation that he will not claim any interest over the said deposit and shall deposit the balance amount of Rs.65 Lacs whenever required to do so.

2. By the impugned order dated 21.07.2005 the Special Court noted that despite public advertisement there was no matching offer and hence it accepted the offer of respondent no.2 the landlord and directed the appellant to file an undertaking within one week to hand over the vacant possession of the premises within four weeks.

3. The main contention advanced on behalf of the appellant that there are no liabilities outstanding for the statutory period and therefore there is no requirement to dispose of its tenancy rights is ex-facie found to have no merits. As a result we find no illegality or infirmity in the impugned order and this appeal deserves to be dismissed.

4. On account of our concern for the proper value for surrender of the tenancy by the appellant on account of long pendency of this appeal for about a decade, learned counsel for respondent no.2 disclosed that for valid reasons, the tenancy is not protected under the relevant rent law and hence no person was likely to offer a better price. But as a goodwill gesture, on instructions of Mr. Ajit Jhaveri, Director of respondent no.2-Reshma Estates Pvt. Ltd. (the landlord) who is present in Court today, he has submitted in writing that the respondent no.2 shall not only deposit the balance Rs.65 Lacs as directed by the impugned order of the Special Court but also undertakes to deposit a further sum of Rs.10 Lacs as an additional consideration and also a sum of Rs.3,92,000/- which is the rental amount received by the landlord from 2006 till date. Respondent no.2 has also agreed that the interest accrued on the amount of Rs.10 Lacs already deposited by the landlord as per the

impugned order in the year 2005 could also go to the Custodian. However, he has prayed for eight weeks' time to make the deposit of the balance amounts, i.e., Rs.65 Lacs, Rs.10 Lacs and Rs.3.92 Lacs. There is no opposition to this offer.

5. In the facts of the case while dismissing the appeal of the appellant, in the larger interest of justice we modify the impugned order and direct respondent no.2 to deposit within eight weeks from today the earlier balance amount of Rs.65 Lacs along with additional amount of Rs.13,92,000/-. In other words respondent no.2 in order to get the benefit of the impugned order shall now make in total a deposit of Rs.78,92,000/- (Rupees Seventy Eight Lac Ninety Two Thousand) within eight weeks and shall not claim interest accrued on the amount of Rs.10 Lac already deposited by him. On such deposit being made within eight weeks, the Custodian shall deliver the possession of the flat to the respondent no.2 the landlord without any delay and in any case within one week of such deposit.

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6. The connected Civil Appeal Nos.5788-5789 of 2005 preferred against earlier orders passed by the Special Court in connection with the same subject matter shall also stand dismissed.

7. In the facts of the case there shall be no order as to costs.

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
August 10, 2015.



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT