

East West University
Bachelor of Business Administration
Legal Environment of Business
BUS 361
Spring 2007

Assignment 1

Work to be done

Under this assignment you are supposed to read the attached copy of the judgment of the Hon'ble High Court Division and then to make a report thereon. In the said judgment Hon'ble Court has applied the rules on "invitation to treat".

Note the followings:

- * This work must be done through the groups already formed.
- * The length of the work shall not be more than two pages; but it excludes the title page.
- * Following points must be addressed in the work:
 - (a) Facts of the case;
 - (b) Issues (disputes) between the parties to the case;
 - (c) Judgment of the Court to settle the disputes and
 - (d) Reasoning behind the judgment.
- * The work must be word processed and be signed by all members.
- * A soft copy of the work must be submitted by an e-mail to the account: ar@ewubd.edu
- * The work shall be submitted by Tuesday, 13th February, 2007.
- * Delay in submitting the work and copying of any kind will seriously be dealt with.

Name of the case: EXECUTIVE ENGINEER VS ASOB ALI

Reported in: 58 DLR (2006) HCD 236

Court deciding the case: HIGH COURT DIVISION

Judge: Justice Mr. Faisal Mahmud Faizee

Date of judgment: August 17th, 2005

Case No.: Civil Revision NO. 300 of 2005.

Parties: Executive Engineer, Sylhet Public Works Department Petitioner

vs

Md Asob Ali..Opposite Party

Judgment

This Rule, upon an application under section 115 of the Code of Civil Procedure, was directed against the judgment and decree dated 14-10-2004 (decree drawn on 21-10-2004) passed by the Additional District Judge, Sylhet in Title Appeal No. 92 of 2004 reversing the judgment and decree dated 26-6-2004 (decree drawn on 28-6-2004) passed by the Assistant Judge, Biyani Bazar, Sylhet in Title Suit No. 53 of 2004 dismissing the suit.

2. The opposite party as plaintiff instituted the instant title suit for a decree of permanent injunction restraining the defendant-petitioner from selling in auction the suit materials to anyone else as attempted by the defendant-petitioner by announcing auction sale for the fourth time. The case of the plaintiff as made out in the plaint, in short, is that the plaintiff as a trader of rods, CI sheets, etc. participated through submission of quotations in the auction invited by the defendant-petitioner for selling some steel materials vide Auction Notice No. 6/2001-2002 published in the local newspaper named "Sylheter Dak" dated 11-9-2003 and became the highest bidder among five bidders; for this he deposited 10% of his bid amount as security in favour of the defendant -petitioner; and that the defendant-petitioner accepted the earnest money and gave assurance to the plaintiff-opposite-party that the auctioned materials would be handed over to him within a short time subject to receiving survey report from the higher authority; subsequently, the defendant-petitioner failed to hand over the materials to the plaintiff for which the plaintiff served a legal notice to the defendant- petitioner on 14-9-2003; in reply, the defendant- petitioner vide Memo No. 4146 dated 16-9-2003 informed the plaintiff that the value of the goods quoted by him was found unsatisfactory and, as such, the authorities did not accept his quotation and proceeded for fresh auction in public interest; at this the plaintiff suffered loss of business as he could not invest the amount of the earnest money in his business; the defendant-petitioner called fresh auction without giving any notice to the plaintiff.

3. The petitioner as defendant contested the suit by filing a written statement denying all the material allegations made in the plaint and contending, *inter alia*, that the suit was not maintainable in the form and manner it has been instituted; it was also bad for non joinder of necessary parties; as per conditions Nos. 6 and 9 of the auction notice the validity of the quotation submitted by the plaintiff expired on the expiry of three months; the authorities reserved the right to accept or reject the quotation of the plaintiff if not found satisfactory; the quotation of the plaintiff was neither accepted nor approved by the authorities nor any letter of acceptance was issued to the plaintiff; neither the plaintiff deposited nor the defendant accepted any amount of his bid money; as such the plaintiff acquired no right, title, interest or possession over the steel materials described in the schedule of the plaint.

4. The Learned Assistant Judge framed the following issues: (I) Whether the suit was maintainable in its form; (II) Whether the suit was barred by limitation; (I/I) Whether the plaintiff had *prima facie* case; (IV) Whether the plaintiff was entitled to the relief prayed for. In the trial, the plaintiff got two witnesses examined including the plaintiff himself and exhibited three documents and submitted some other documents through 'firisti'; and, on the other hand, the defendant got himself examined as the lone witness and exhibited two documents and submitted several other documents through 'firisti'. The learned Assistant Judge found issues Nos I, 3 and 4 against the plaintiff and dismissed the suit. The plaintiff preferred an appeal which was contested by the defendant-petitioner. The learned Additional District Judge allowed the appeal setting aside the judgment and decree of the learned Assistant Judge and decreed the suit. Hence this civil revision by the defendant-respondent- petitioner, and the Rule.

5. Mr Md Azizul Haque, the learned Counsel for the petitioner submits that although the plaintiff- petitioner was the highest bidder in the first auction his bid was not accepted and he was not treated as the successful bidder as contemplated in condition No. 5 of the auction notice No. 6/2001-2002 and, as such, no letter was issued asking him to deposit 90% of the quoted amount as per condition No. 5 and, as such, he did not pay the same and that the 10% of the bid amount was paid as per condition No. 4 of the auction notice which was prior to the opening of the bids submitted by all the bidders which amount was common security money for each of the bidders and that being so the plaintiff did not acquire any right upon the auctionable goods either as a purchaser or as a successful bidder and that the plaintiff could not adduce any evidence otherwise to controvert this fact. Mr Haque, then submits that the terms of the notice for auction sale of goods inviting bids by submission of quotations are binding upon both the sides if the same are not in contradiction with law. Mr Haque reads out conditions Nos. 4, 5, 6 and 9 of Auction Notice No. 6 of 2001-2002 which are as follows:

"(4). Bank draft covering 10% of quoted value in favour of the Executive Engineer, Sylhet PWD Division, Sylhet from any schedule Bank of Bangladesh should be enclosed with offers as security, failing which their offer will be rejected."

"(3). The successful bidder whose offer is approved by the competent authority of PWD will be informed by the undersigned, he will have to deposit the rest 90% of his/their quoted amount including 3% of the bid money as income tax within 7(seven) days from date of issue of such order, failing which his/their offer shall be liable for rejection including forfeiture of the security money to the Government without further notice."

"(6). If fresh auction is invited for those materials for any reason whatsoever the bid of the highest bidder shall remain valid either for 3 months or till the date of disposal of fresh auction whichever is earliest."

"(9). The competent authority of this department reserves the right to accept or reject any or all offers without assigning any reason."

6. Mr AKM Mainuddin, the learned Counsel appearing with Mr Md Nurul Huda Ansary, Advocate for the plaintiff-opposite party, submits that the plaintiff was considered to be the successful bidder by the defendant and his authorities as the plaintiff came out to be

the highest bidder, and as his bid was not formally rejected, and as his deposit of 10% of bid money was not returned, and as the matter was admittedly under consideration of the authorities of the defendant for about one year. Mr Mainuddin refers to the judgment of the Additional District Judge and submits that it has been rightly held by the appellate Court below that the defendant acted in violation of the terms and conditions of the auction notice having not proceeded according to condition No. 5 of the auction notice, and having proceeded, without consulting the competent authority, to hold a fresh auction after about 14 months keeping the plaintiff in uncertainty for such a long period. Mr Mainuddin further submits that such action was also violative of the principle of natural justice and also harassment of the plaintiff whose business money was blocked for long time with the defendant.

7. Mr Md Jafor Ali, learned Assistant Attorney-General, submits that evidently the authorities of the defendant-petitioner did not accept the bid of the plaintiff nor did they accept or declare the plaintiff as successful bidder as per condition No. 5 of the auction notice, and, as such, the defendant had no reason to proceed in accordance with condition No. 5 or condition No. 9 of the auction notice as observed by the learned Additional District Judge in his judgment in the appeal and that the defendant being a public servant acted bonafide by calling a fresh auction as contemplated in condition No. 6 with a view to have higher price of the goods which was evident from his reply to the legal notice by the plaintiff. Mr Md Jafor Ali then submits that for the alleged delay and harassment the plaintiff could have filed and might file a suit for damages and or compensation, but since no legal right had accrued in his favour in respect of the goods in auction his instant suit for permanent injunction was misconceived.

8. Mr Md Azizul Haque, the learned Counsel for the petitioner, finally, submits that it is now an accepted proposition of law regarding auctions that no legal right in the auctionable goods accrues to a bidder only because he comes out to be the highest bidder. In support of his submission, Mr Azizul Haque has referred to a decision of our Appellate Division reported in 2 *MLR (AD) 109*. In that case, Senior Advocate Syed Ishtiaq Ahmed was appearing for the petitioner (highest bidder), and their Lordships in their decision observed, "Mr Ahmed has been fair enough to submit that no legal right has accrued to the petitioner merely because he has come out to be the highest bidder".

9. The law relating to sales of goods is the Sale of Goods Act, 1930. The instant case is a case of sale of goods in auction. According to section 4 of the Sale of Goods Act, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price; and where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell; and an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. According to section 5 of the Sale of Goods Act, a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. Definitions of the words "buyer", "goods", "price", "property" and "seller" are provided in section 2 of the Sale of Goods Act.

10. Then, there is the Contract Act, 1872. Clause(a) of section 2 of the Contract Act provides that when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal; and clause(b) provides that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted, and a proposal when accepted, becomes a promise; Clause(e) provides that every promise and every set of promises, forming the consideration for each other, is an agreement; and Clause (h) provides that an agreement enforceable by law is a contract. Section 10 of the Contract Act provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not, by the Contract Act, expressly declared to be void.

11. The feature, that distinguishes a sale of goods in auction from a sale of goods in market, is that, in an ordinary sale in market the seller offers to sell his good at a specific price and the buyer accepts the offer occasioning a contract of sale or makes a counter-offer with a price convenient to him which, in turn, is for the seller to accept or not, and if the seller accepts, a contract for sale is made, otherwise not; and, on the other hand, in a sale of goods in auction, the seller, instead of making an offer to sell his good at a specific price, extends an invitation to the members of the public in general for individually offering or quoting prices to buy his goods and each of the intending buyers individually offers or quotes price which, in turn, is for the seller to accept or not.

12. Therefore, an auction notice means only an invitation extended to the public in general for making individual offers. The auction notice does not amount to an offer or proposal and the quotation of price offered by an intending buyer does not amount to an acceptance of offer or proposal thereby creating any promise or agreement. It is by the acceptance by the seller of any of these offers or proposals of the persons submitting quotations that it becomes a promise or an agreement. Thus, the mere fact that a person made a certain quotation in respect to the auction notice, even granting that it was the highest quotation, will not, in any manner, create on the person who issued the auction notice, an obligation to accept the quotation.

13. So, in view of the provisions of the Sale of Goods Act and the Contract Act, a party coming out to be the highest bidder or a party offering the highest price for the goods in auction does not, per se, acquire any legal right in the goods for sale in auction, and for the same reason the auction seller neither becomes legally obliged to accept the highest bidder as the auction purchaser nor becomes legally retarded from holding a fresh auction. That being the position of law, in the instant case no legal right in respect of the goods in auction had accrued in favour of the plaintiff-opposite party; and the defendant petitioner was under no legal obligation to accept the bid or quotation of the plaintiff-opposite party and sell him the goods, although his quotation was the highest.

14. The principle of legitimate expectation, arbitrariness in financial dealing by public functionaries and malafide are neither attracted in the facts and circumstances of the case nor have been argued by the plaintiff-opposite party inasmuch as it is not the case that a lower bidder was being approved or accepted as the successful bidder, or that the goods were being sold out to a lower bidder or to a stranger to the auction at a higher price upon negotiation; but the case is that the auction seller was attempting to hold fresh auction with the speculation of fetching a higher price where discretion of the auction seller to accept or reject any or all offers and to hold fresh auction, have been expressly contemplated in the concerned auction notice.

15. Concluding the discussion as above, I am inclined to hold that the impugned judgment and decree of the appellate Court below are not sustainable. Accordingly, the impugned judgment and decree passed by the learned Additional District Judge are set aside and those of the learned Assistant Judge restored.

The result, therefore, is that the Rule is made absolute. There will be no order as to costs. The order of stay passed at the time of issuance of the Rule is hereby vacated. Send down the records of the Courts below at once.

ASSIGNMENT # 1

Name of The Case

EXECUTIVE ENGINEER VS ASOB ALI

Legal Environment of Business

Course Code: BUS 361

Section # 02

Spring2007

Submitted To

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Date of Submission: 11 February 2007

Facts of The Case

Here the parties are Executive Engineer, Sylhet Public Works Department petitioner & Md. Asob Ali is the Opposite Party.

The petitioner called a public auction to sell some steel materials. The plaintiff as a trader of rods, CI sheets, etc. participated in the auction invited by the defendant-petitioner for selling some steel materials and became the highest bidder among five bidders. For this he deposited 10% of his bid amount as security in favor of the defendant -petitioner; and that the defendant-petitioner accepted the earnest money and gave assurance to the plaintiff-opposite-party that the auctioned materials would be handed over to him within a short time.

Later the-defendant-petitioner failed to hand over the materials to the plaintiff for which the plaintiff served a legal notice to the defendant- petitioner. In reply, the defendant- petitioner informed the plaintiff that the value of the goods quoted by him was found unsatisfactory. The authorities did not accept his quotation and proceeded for fresh auction without giving any notice to the plaintiff. and for this, the plaintiff suffered loss of business as he could not invest the amount of the earnest money in his business.

And for this reason the case has been filed.

Issues (Disputes) Between The Parties To The Case

The defendant-petitioner called for a new auction without notifying the plaintiff and for this reason the plaintiff loose money. So, to claim the damage the case has been filed.

Judgment of The Court to Settle The Disputes

The judgment was that, the rule is made absolute. There will be no order as to costs.

P.T.O.

Reasoning Behind The Judgment

1. No letter was issued asking him to deposit 90% of the quoted amount and as such, he did not pay the same and that the 10% of the bid amount was paid.
2. The auction notice which was prior to the opening of the bids submitted by all the bidders which amount was common security money for each of the bidders.
3. The plaintiff did not acquire any right upon the auctionable goods either as a purchaser or as a successful bidder.
4. The quotation of the plaintiff was neither accepted nor approved by the authorities nor any letter of acceptance was issued to the plaintiff; neither the plaintiff deposited nor the defendant accepted any amount of his bid money;
5. Mr Md Azizul Haque, the learned Counsel for the petitioner submits that although the plaintiff- petitioner was the highest bidder in the first auction his bid was not accepted and he was not treated as the successful bidder