

PETITIONER:
M. LACHIA SETTY & SONS LTD. ETC. ETC.

Vs.

RESPONDENT:
THE COFFEE BOARD, BANGALORE

DATE OF JUDGMENT 09/10/1980

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1981 AIR 162 1981 SCR (1) 884
1980 SCC (4) 636

ACT:

Auction Sales - Auctioneer, if competent to impose his own terms for holding auctions-Mitigation of loss in resale of goods not taken delivery of-Rights of defaulting and non-defaulting parties.

HEADNOTE:

One of the three methods followed by the respondent. (The Coffee Board), for releasing raw coffee seeds to the trade for internal consumption was by "pool auctions" in which only dealers registered with the Board were permitted to participate. The pool auction was conducted by a Sale Conducting officer (who was Chief Marketing Officer of the Board). Condition 8 of the Conditions of Sale provides, "telegraphic bids or telegraphic instructions regarding bidding will not be considered." Condition 6 provides, "the seller does not bind himself to accept the highest or any bid. He is not bound to assign any reasons for his decision and his decision shall be final and conclusive."

The bids offered by the two appellants, who were registered dealers, at a pool auction were accepted by the Sale Conducting officer, even though the bids were not the highest. On their failure to take delivery of the stocks and to pay the bid money within the stipulated period, the Board, after giving due notice to the appellants re-sold the stocks two months later at another pool auction. The prices realised at the re-auction being much lower than the appellant's bids, the Board sought to realise the differences by way of suits.

The appellants disclaimed liability to make good the loss to the Board mainly on the ground that there was no concluded contract between the parties in that the appellants had sent telegrams to the Board revoking their bids before the declaration of the results of the auction; that in one case in regard to five lots there was no concluded contract as the Board even under clause 6 had no power to accept a lower bid on receipt of a higher bid which it did; and that the appellants were not responsible for the loss which the Board had claimed as having arisen out of the resale of the stocks bid by them in that the loss was the result of deliberate bringing down of prices by the Board and further there was inordinate delay in holding the re-

sale.

The Board, on the other hand, alleged that Condition 8 did not permit telegraphic withdrawal or retraction of any bid and since the oral retraction had not been properly done to the officer concerned there was a concluded contract; Condition 6 was framed to prevent the mal-practice among dealers by cornering stocks by forming rings among themselves and puffing up prices to make unlawful gains to the detriment of the consumer and that lastly the loss which resulted in the resale of stocks was the result of fall in prices at the time of resale and therefore, was not unreal. 885

Accepting the appellants' contention the trial court dismissed the Board's suit for recovery of loss. On appeal by the Board the High Court substantially upheld its contentions and decreed the suits.

Dismissing the appeals.

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HELD: 1. (a) Condition No. 8 was wide enough to bar withdrawal or retraction of bids by telegrams. [891H]

(b) On the face of it "instructions regarding bidding" would mean any instructions, not merely instructions by way of clarification, modification, amplification of bids but also withdrawal or retraction of bids. Such instructions by telegram would be impermissible. Having regard to the solemn procedure prescribed and followed by the Board any instructions by telegram which more often are cryptic and lack in authenticity on their face are rightly prohibited. The fact that nowhere else in the Conditions of Sale is the withdrawal or retraction of bids dealt with, would precisely be the reason why this Condition should be widely construed as including the topic of instructions regarding withdrawal or retraction of bids. [891E-G]

2. There is no force in the contention that there were no concluded contracts between the parties on account of oral withdrawal of the bids. Assuming that the oral retraction was made as claimed by the appellants, the fact that it was made to the Assistant Coffee Marketing Officer who had no authority to accept it (instead of to the Sale Conducting Officer who was in charge of the pool auction) made the retraction ineffective and of no consequence. [892C-D]

3. (a) An auctioneer can set his own terms and conditions for holding an auction. If he does so, it is these conditions that would govern the rights of the parties. [893G]

(b) The Chief Marketing Officer was well within his rights in accepting the lower bids. When Condition 6 says that the seller is not bound to accept the highest bids, it necessarily implies that he can accept any lower bids. The words, "or any bid" after the words "the highest" are used not for emphasising that even the highest bid need not be accepted. The use of the words "or any bid" would be superfluous if the same consequence of holding a fresh auction was to ensue in the event of the highest bid being declined. By necessary implication power had been conferred on the Board or its Chief Marketing officer to accept a lower bid in preference to any higher bid. [894E-H]

(c) The practice followed by the Board over a period long before the disputes arose showed that the parties to the pool auctions understood Condition No. 6 as conferring power on the Board or its Chief Marketing Officer to accept lower bids in preference to higher bids. More than all, the Condition was devised to put an end to the mal-practice of the dealers cornering stocks, puffing up prices and so on to

the detriment of the consumer. [895A]

4.(a) The well accepted position in law on the question of mitigation of loss is that it does not give any right to the party in breach of the contract but is a concept to be borne in mind by the Court while awarding damages. The non-defaulting party is not expected to take steps which would injure innocent persons. Steps taken by him in performance or discharge of his statutory duties cannot be weighed against him. The question in each case would be one of reasonableness of action taken by the non-defaulting party. [897C]

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In the instant case the various measures taken by the Board were to prevent mal-practice by dealers and to protect the interest of the consumers. In any event they were not directed against the defaulting dealers at the pool auction. At the earlier auction the Sale Conducting Officer decided to accept the lower bids in preference to the higher bids offered by the dealers who despite the oral warning issued by him against such a method, offered higher bids exceeding the average prices for the month. It was for this reason that at the re-sale the prices realised were lower than those offered by the appellants at the earlier pool auction. At the re-sale at any rate, only the highest bids were accepted and therefore, the loss arising from the re-sale was not unreal as claimed by the appellants. [898A-C]

(b) On the facts of this case the re-sale had been held within a reasonable time. [898G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION ; Civil Appeal Nos. 2567-2568 of 1969.

From the Judgment and order dated 19-7-1963 of the Madras High Court in Appeal Nos. 260/58 and 165/60.

S. V. Gupte, S. S. Javali and M. Veerappa for the Appellant.

Sundran Swami, Ravindra Swami and K.J. John for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J.-These appeals by certificates granted by the High Court of Judicature at Madras are directed against its common judgment and two decrees dated July 19, 1963 in A.S. No. 260 of 1958 and A.S. No. 165 of 1960 respectively whereby the High Court decreed the respondent suits (O.S. No. 319/1955 and O.S. No. 316/1955) in damages against the two appellants (M. Lachia Setty & Sons Ltd. and Giri Coffee Works) respectively.

The respondent (the Coffee Board, Bangalore) is a statutory body incorporated under the Coffee Act, 1942 having complete control-almost monopolistic-over the coffee trade, internal and external. Its functions and duties require it to keep a control over coffee prices regard being had to the interest of all concerned, the grower, planter, licensed curer, trader and consumer. Inter alia, it is entrusted with a duty of marketing coffee delivered to it by all owners of coffee estates and for that purpose it is empowered to make allotments of coffee between export and internal trade and in regard to the coffee allotment made to the latter category at the material time it adopted three methods for releasing the coffee to the trade for internal consumption: (1) by sales called "pool auctions" (wholesale) held at Bangalore, Coimbatore and certain other centres in Madras and Mysore States, (2) by retail sales known

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as "local auctions" and (3) by sales to cooperative societies and at propaganda centres established by it. In these appeals we are concerned with internal sales falling under the first category, namely, sales effected periodically through "pool auctions". Admittedly, at such "pool auctions" only dealers registered with the respondent Board to whom permits are issued are entitled to participate and such "pool auctions" are inter alia governed by special conditions prescribed by the respondent Board generally for regulating such sales which are termed as 'Conditions of sale' (copy produced at Ex. A-3).

On October 7, 1952 various quantities of coffee (of various grades and quality) comprised in 315 lots were put up for sale by the respondent at its "pool auction" held at Coimbatore, the auction being conducted by the Chief Coffee Marketing Officer himself as the Sale Conducting Officer. In that auction several registered dealers including the two appellants (M. Lachia Setty & Sons Ltd. and M/s Giri Coffee Works) participated and lodged their bids in the prescribed forms for certain lots in the Bid Boxes maintained for the purpose. The result of the auction was announced some time after 2 P.M. on October 8, 1952 and inter alia the bids of the two appellants in respect of the quantities of the lots for which they had submitted their bids were accepted by the Chief Marketing Officer, though some of the bids in respect of five lots were not the highest, and they were declared to be the successful bidders. On the appellants' failure to pay for and take delivery of the lots either within the stipulated period of 17 days or the extended period the respondent Board after issuing a notice of re-sale dated December 18, 1952 to the appellants and others, who had similarly defaulted, held a re-sale (another pool auction) on December 23, 1952 at which considerably lower price was realised and the respondent Board filed a batch of 15 suits against the defaulting bidders including the two appellants. In suit No. 319/1955 which was filed against the appellant M. Lachia Setty & Sons Ltd., the loss incurred as a result of the re-sale was claimed at Rs. 34,570-6-6 as and by way of damages and in suit No. 316/1955 filed against appellant M/s Giri Coffee Works a loss of Rs. 5,917 was claimed.

By their written statements the appellants, inter alia, raised three principal defences. First, the appellants contended that in their case they had revoked their bids orally as well as by a telegram dated October 7, 1952 before the declaration of the results and hence there were no concluded contracts between them and the Coffee Board and, therefore, they could not be made liable for the loss arising on re-sale. Secondly, it was contended that at an

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auction a lower bid always lapses on receipt of a higher bid and as such the lower bid becomes incapable of acceptance and that even under condition No. 6 of the 'Conditions of Sale' the Board or its Chief Coffee Marketing Officer had no power to accept their lower bids (in respect of 5 lots in the case of Giri Coffee Works) as those were not the highest bids for the lots concerned. Thirdly, it was contended that the Coffee Board having deliberately depressed or brought down the prices of the coffee had disentitled itself to claim damages in as much as the loss arising on such re-sale was unreal and in any event the re-sale having been held after an inordinate delay the appellants were not liable for the quantum of loss claimed. It is unnecessary to set out the other defences raised in the suits since in these appeals only the aforesaid three contentions were pressed by

counsel for the appellants for our acceptance.

The respondent in its replications refuted the aforesaid contentions of the appellants. It was pointed out that under condition No. 8 governing the "pool auctions" telegraphic withdrawal or retraction of any bid was not permissible and the oral retraction had not been made to the proper officer and, therefore, there being no valid retraction the appellants' bids had been properly accepted resulting in concluded contracts. It was denied that in "pool auction" sales respondent Board was obliged to accept only the highest bid: on the other hand, it was contended that power to accept any lower bid in preference to the highest bid was implied in condition No. 6, especially having regard to duty owed by the respondent Board to maintain the coffee prices at proper level in the interest of all concerned. The respondent further denied that it had disentitled itself from claiming the loss arising on re-sale because of the fall in prices at the time of such re-sale or that the loss sustained was unreal. It pointed out that the measures taken by it in regulating coffee prices had become necessary as some of the registered dealer and a few of their friends had formed themselves into a ring and had cornered coffee by puffing up prices with a view to make unlawful gains for themselves to the detriment of the consumer. It also denied that there was any delay in holding the re-sale.

Parties led oral as well as documentary evidence and on an appreciation of the entire material the trial court accepted the aforesaid defences raised by the appellants and by a common judgment dated March 31, 1958 dismissed the suits with costs. The respondent Coffee Board preferred appeals to the High Court and by its common judgment dated July 19, 1963 the High Court allowed the appeals and decreed the respondent's claims against the appellants. The High Court took the view that under Condition

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No. 8 telegraphic withdrawal or retraction of bids was barred and the oral retraction made by M. L. Gopal Setty on behalf of both the appellants (as the Managing Director of M. Lachia Setty & Sons Ltd. and as a partner of M/s Giri Coffee Works) to the Assistant Officer was of no avail and, therefore, the appellants' bids had been properly accepted resulting in concluded contracts. It further took the view that condition No. 6 of Conditions of Sale conferred an implied power on the Board to accept any lower bid in preference to the highest one and having regard to the facts and circumstances obtaining in the instant case the Chief Coffee Marketing Officer was justified in accepting the lower bids in preference to the highest bids. The High Court negatived the appellants' contentions in regard to the loss claimed by the respondent Board and decreed the amounts claimed by it from the appellants. It is these decrees passed by the High Court in favour of the respondent that are being challenged by the appellants before us in these appeals.

The first contention raised by counsel for the appellants in support of the appeals was that before the results of the auction were announced a little after 2 - P.M. On October 8, 1952, the appellants had retracted their bids orally as well as by a telegram and, therefore, their bids could not be accepted thereafter and no concluded contracts resulted between the appellants on the one hand and the Coffee Board on the other. In this behalf reliance was placed by counsel on two factual aspects emerging from the record. He pointed out that M. L. Gopal Setty (D.W.1) as

the Managing Director of M. Lachia Setty & Sons Ltd. and as the partner of M/s Giri Coffee Works had despatched a telegram on October 7, 1952 (Ex. B-22) addressed to the Chief Coffee Marketing Officer, Coffee Board, Coimbatore to the effect "Hereby withdraw all bids given today on behalf of Giri Coffee Works and Mysore lachia Setty & Sons Limited." It was initially received by F. M. Saldhana (PW1), the Assistant Coffee Marketing Officer, in his office at about 12.30 A.M. (midnight) on October 8, 1952 and thereafter was received by Shri Kuttalalingam Pillai, the Chief Coffee Marketing Officer (PW3), at about 12.30 P.M. on October 8, 1952 which was long before the declaration of the results. Secondly, he pointed out that Saldhana (PW1) admitted in his evidence that on October 8, 1952 before the results were announced several dealers including M. L. Gopal Setty were present waiting in the office and at that time Gopal Setty asked him whether his telegram to Chief Coffee Marketing Officer had been received to which he replied in the affirmative but told Gopal Setty that the Board could not take cognizance of telegrams regarding bids whereupon Gopal Setty said

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that he was giving him (Saldhana) oral instructions then in confirmation of the telegram to which Saldhana replied that he (Saldhana) was not the Sale Conducting Officer and that it was too late to withdraw or retract as the bids had been accepted by the Sale Conducting Officer, meaning the Chief Coffee Marketing Officer. It is in this manner that the appellants contended that they had retracted their bids before the declaration of the results of the auction. On the other hand, counsel for the respondent Board relied upon Condition No. 8 of the Conditions of Sale under which he urged telegraphic withdrawal or retraction of bids was impermissible and as regards the oral retraction it was contended that same' not having been made to the proper officer, namely, the Chief Coffee Marketing Officer, was of no avail.

It would, therefore, be necessary to consider Condition No. 8 as on its proper construction will depend the question whether telegraphic withdrawal or retraction of bids was prohibited or not? A copy of the Conditions of Sale governing 'pool auctions' was produced at Ex. A-3. At the outset it must be observed that "pool auctions" conducted by the Coffee Board are very much unlike the usual public auctions where competitive bids are usually given openly within the hearing of all the bidders so that any bidder after knowing what the earlier bid is can improve upon the same by giving a higher bid. At the "pool auctions" conducted by the Coffee Board only registered dealers holding the requisite permits from the Board are allowed to participate and some solemnity is attached to the act of giving the bid in as much as Condition No. 1 provides that the participants shall submit their quotations (bids) in the form prescribed by the Board and the bids in the prescribed form are required to be lodged in the closed and sealed bid boxes maintained for the purpose, and at the close of the bidding, the boxes are opened and record thereof is made by the Sale Conducting Officer under his signature which is also attested by a representative of the bidders; the bids are then tabulated and the Sale Conducting Officer selects the bids and makes the allotments to the successful bidders and a declaration containing the names of the successful bidders alongwith the lots and quantities allotted to them is put up on the notice board in the office of the Board. In reality the "pool auctions" resemble or are more akin to

sales by inviting tenders. It is in the context of such undisputed procedure that is solemnly followed in the matter of conducting the "pool auctions" that Condition No. 8 will have to be considered. It runs thus:

"8. Telegraphic bids or telegraphic instructions regarding bidding will not be considered."

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The question is whether the phrase "telegraphic instructions regarding bidding" occurring in the above condition is wide enough to include instructions pertaining to withdrawal or retraction of bids? According to counsel for the appellants the phrase refers only to instructions regarding the making or giving of bids or at the highest would include instructions by way of clarification or modification of bids already given which is impermissible by telegraphic communications. He urged that the topic of withdrawal or retraction or cancellation of bids has not been dealt with anywhere else in the Conditions of Sale nor by Condition No. 8 at all and, therefore, in the absence of any specific or express bar against withdrawal or retraction by telegrams, the normal mode under the general law of communicating a withdrawal or retraction by a telegram would be and was available to the appellants. According to him the curtailment of the normal mode of communicating a retraction which is open to an offerer under the general law must be by some express provision or must arise by necessary implication. It is not possible to accept the construction that is sought to be placed by counsel for the appellants on the concerned phrase occurring in Condition No. 8. In the first place giving of telegraphic bids having been expressly barred in the earlier part of the Condition the phrase "telegraphic instructions regarding bidding" cannot again refer to instructions regarding the act of giving or making bids. Secondly, on the face of it "instructions regarding bidding" would mean any instructions, not merely instructions by way of clarification, modification, amplification of bids but also withdrawal or retraction of the bids and such instructions by telegrams would be impermissible. Moreover having regard to the solemn procedure prescribed and followed by the Coffee Board in the matter of conducting its "pool auctions" submission of bids is required to be done in prescribed forms and telegraphic bids are prohibited it stands to reason that any instructions concerning such bids whether by way of clarification, amplification, modification, cancellation or retraction should not be permissible by telegrams which are more often cryptic and do not possess authenticity on their face. Further, the fact that nowhere else in the Conditions of Sale is the topic of withdrawal or retraction of bids dealt with would precisely be the reason why Condition No. 8 should be widely construed as including the topic of instructions regarding the withdrawal or retraction of bids. In our view, the High Court was right in coming to the conclusion that Condition No. 8 was wide enough to bar withdrawal or retraction of bids by telegram.

Turning to the oral retraction made by M. L. Gopal Setty on October 8, 1952, the High Court has taken the view that the case

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of oral retraction before the results were announced was not true, which may be difficult to sustain. But, even if the evidence about such oral retraction which consists of the testimony of Gopal Setty (D.W. 1) and Saldhana (PW 1) were to be accepted at its face value, the same would be of no avail to the appellants because, such oral retraction was

made to Saldhana, the Assistant Coffee Marketing Officer, who had no authority in the matter. Under the procedure it is the Sale Conducting Officer who is in charge of the pool auctions. Therefore, retractions had to be made to either the Sale Conducting Officer or the Chief Coffee Marketing Officer, the executive head of the Board, and that is why the telegram Ex. B-22 was addressed on behalf of the appellants to the Chief Coffee Marketing Officer. In this case the Chief Coffee Marketing Officer himself was the Sale Conducting Officer and the oral retraction was not made to him but it was made to Saldhana, who had no authority. The oral retraction was, therefore, ineffective and of no consequence. In our view, therefore, it is not possible to accept the contention of the appellants that there were no concluded contracts between them on the one hand and the Coffee Board on the other on account of withdrawal or retraction of their bids.

The next contention urged by counsel for the appellants was that the Chief Coffee Marketing Officer had no power to accept lower bids when higher bids had been submitted by other participants as, according to him, the normal established rule at auction sales has been that a lower bid lapses on receipt of a higher bid with the result that the lower bid becomes incapable of acceptance. He further urged that even under Condition No. 6 of the Conditions of Sale, on which the respondent Board sought to rely, confers no power on the Board or its Chief Coffee Marketing Officer to accept lower bids, for, all that Condition No. 6 does is that it frees the Board from the obligation to accept the highest or any bid and the Board need not assign any reasons for doing so. Counsel fairly stated that so far as the appellants are concerned this contention was available to Giri Coffee Works and that too regarding its bids only in respect of 5 lots, for, in the case of other bids given by Giri Coffee Works and all bids given by M. Lachia Setty & Sons Ltd. that were accepted were the highest bids. In support of this contention counsel relied upon the following statement of law occurring in Halsbury's Laws of England (4th Edn.) Vol. 9, para 231 at page 102:

"231 Auctions.-At auction sales, it is a long-established rule that prima facie the auctioneer's request for bids is a mere invitation to treat, and that each bid constitutes an offer which is accepted on behalf of the seller by the auctioneer when.

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he signifies his acceptance in the usual manner. It would seem, moreover, that each bid lapses as soon as a higher bid is made

It will appear clear that the underlined portion of the statement of law is supported by the case of *Blackbeard v. Lindigren* referred to at footnote 3. [(1786) 1 Cox Eq Cas 205 = 29 English Reports Chancery) 1130]. It was a case where an Estate was sold before the Master for payment of debts and A was reported to be the best bidder at the sum of '13,000 but before the report was confirmed it was discovered that A was insane at the time of the bidding. The Court was moved on behalf of all the parties in the cause that B the next best bidder might be reported to be the purchaser at the sum bidden by him. To this motion B consented but the Court thought it was irregular and directed the estate to be re-sold generally. Relying on this decision counsel for the appellants contended that the normal rule was that a lower bid lapses on the receipt of a higher bid, and if the highest bid was not to be accepted for any reason, the auction must be abandoned and fresh

auction would be required to be held and, therefore, in the instant case the Chief Coffee Marketing Officer could not accept the lower bids of Giri Coffee Works in respect of five lots.

Counsel for the respondent Board did not cavil at the aforesaid statement of law but he urged that the same was applicable to auctions generally in the absence of special conditions prescribed by the auctioneer governing the auction. According to him it was well-settled that an auctioneer can prescribe his own terms and conditions on the basis of which property is exposed to sale by auction, and in that event, the special conditions so prescribed by him would govern the position. He strongly relied upon Condition No. 6, as being a special condition prescribed by the Board governing the "pool auctions" conducted by it and the said condition impliedly confers power upon the Board or its Chief Coffee Marketing Officer to accept a lower bid in preference to any higher bid that might be received. It cannot be disputed that an auctioneer can set his own terms and conditions for holding an auction and if he does so those conditions would govern the rights of the parties. The short question which arises for our consideration is whether Condition No. 6 includes a power to accept a lower bid in preference to any higher bid?

Condition No. 6 runs thus:

"(6) The seller does not bind himself to accept the highest or any bid. He is not bound to assign any reasons for his decision, and his decision shall be final and conclusive."

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Counsel for the appellant urged that the language of Condition No. 6 does not show that any power was intended to be conferred on the seller i.e. the respondent Board but it is concerned with freeing the Board from the obligation to accept the highest bid by stating that the seller does not bind himself to accept highest bid and for such non-acceptance he is not obliged to give any reasons. Secondly, all that the condition says is that the seller is not bound to accept the highest or any bid but does not say that the seller can accept that lower bid. According to him, the words "or any bid" which follow the words "the highest" merely emphasize the aspect that even the highest bid need not be accepted. He, therefore, urged that in the absence of any power being conferred on the Board or its Chief Coffee Marketing Officer to accept any lower bid in preference to a higher bid the normal rule applied and the five lots should have been withdrawn from that auction and put up for fresh auction. We are not impressed by the submissions made by counsel for the appellants on the question of proper construction of Condition No. 6. It is true that Condition No. 6 is couched in a peculiar way but when it states that the seller is not bound to accept the highest bid it necessarily implies that he can accept any lower bid. The addition of the words "or any bid" after the words "the highest" seems to us to be of some significance. We do not agree that these words are used merely for the purpose of emphasising the aspect that even the highest bid need not be accepted. We are of the view that two separate powers-power to decline the highest bid and power to decline any bid-with different consequences ensuing are intended to be conferred on the seller by this condition. The addition of the word "or any bid" would be superfluous if the same consequence (of holding a fresh auction) was to ensue in the event the highest bid being declined. Therefore, on construction of the condition it is clear that by necessary implication

power had been conferred on Board or its Chief Coffee Marketing Officer to accept a lower bid in preference to any higher bid. Besides, at Ex. A-275 the respondent Board has produced a tabulated statement showing a number of instances where the highest bids were rejected and lower bids accepted at "pool auctions" conducted by it from 1949 to 1952-a period long before the instant dispute arose which clearly shows that the parties to the pool auctions also understood Condition No. 6 as conferring a power on the Board or its Chief Coffee Marketing Officer to accept lower bids in preference to higher bids. Moreover, such construction of Condition No. 6 would accord with the accomplishment of the main function of the Board to control coffee prices by maintaining them at proper level as the power to accept

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a lower bid in preference to any higher or the highest bid helps avoiding malpractices such as formation of rings or syndicates by coffee dealers, cornering of coffee by a few dealers, puffing up of prices by them, etc. In the view which we are taking of Condition No. 6, it is clear that the Chief Coffee Marketing Officer in the instant case was within his rights when he accepted the lower bids received from Giri Coffee Works in respect of 5 lots. The appellants' contention in this behalf, therefore, must fail.

The last contention urged by counsel for the appellants on the quantum of loss claimed by the respondent comprised a two pronged attack against the re-sale held in respect of the defaulted lots of coffee. First, the Board was under an obligation to mitigate or minimise the loss arising from the failure on the part of the appellants to pay for and take delivery of the coffee allotted to them at the pool auction, but instead deliberate measures were taken by the Board to bring down the prices of coffee and then effected a re-sale on December 23, 1952 resulting in the alleged loss of Rs. 34,570-6-6 and Rs. 5,917 respectively, which could not be regarded as a loss directly and naturally arising from the breach in the ordinary course of events, but was unreal, created and brought about by the respondent and, therefore, the same was not recoverable from the appellants. Secondly, the re-sale was not held within reasonable time of breach but was inordinately delayed and, therefore, the appellants were not liable for the quantum claimed. It may be stated that the contention that the defaulted coffee ought to have been put up for sale at Export Auction and not at Pool Auction, though urged in the lower Courts, was not pressed before us. For the reasons which we shall indicate presently, we do not find substance in either of these two grounds of attack.

At the outset it must be observed that the principle of mitigation of loss does not give any right to the party who is in breach of the contract but it is a concept that has to be borne in mind by the Court while awarding damages. The correct statement of law in this behalf is to be found in Halsbury's Laws of England (4th Edn.) Vol. 12, para 1193 at page 477 which runs thus:

"1193. Plaintiff's duty to mitigate loss. The plaintiff must take all reasonable steps to mitigate the loss which he has sustained consequent upon the defendant's wrong, and, if he fails to do so, he cannot claim damages for any such loss which he ought reasonably to have avoided."

Again, in para 1194 at page 478 the following statement occurs under the heading 'Standard of conduct required of the plaintiff:

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"The plaintiff is only required to act reasonably, and whether he has done so is a question of fact in the circumstances of each particular case, and not a question of law. He must act not only in his own interests but also in the interests of the defendant and keep down the damages, so far as it is reasonable and proper, by acting reasonably in the matter. In cases of breach of contract the plaintiff is under no obligation to do anything other than in the ordinary course of business, and where he has been placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the defendant whose breach of contract has occasioned the difficulty.

The plaintiff is under no obligation to destroy his own property, or to injure himself or his commercial reputation, to reduce the damages payable by the defendant. Furthermore, the plaintiff need not take steps which would injure innocent persons." (Emphasis supplied).

In *Banco De Portugal v. Waterlaw & Sons, Ltd.*, Lord Shankey, L.C., quoted with approval the statement of law enunciated in *James Finlay & Co. v. N. V. Kwik Hoo Tong, Mondel Maatchappij*, to the effect "In England the law is that a person is not obliged to minimise damages on behalf of another who has broken a contract if by doing so he would have injured his commercial reputation by getting a bad name in the trade." In *American Jurisprudence* 2d, Vol. 22 para 33 (at pp. 55-56) contains the following statement of law:

"33. The general doctrine of avoidable consequences applies to the measure of damages in actions for breach of contract. Thus, the damages awarded to the non-defaulting party to a contract will be determined and measured as though that party had made reasonable efforts to avoid the losses resulting from the default. Some courts have stated this doctrine in terms of a duty owing by the innocent party to the one in default; that is, that the person who is seeking damages for breach of contract has a duty to minimise those damages. However, on analysis, it is clear that in contract cases as well as generally, there is no duty to minimize damages, because no one has a right of action against the non-defaulting party if he

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does not reasonably avoid certain consequences arising from the default. Such a failure does not make the non-defaulting party liable to suit; it only indicates that the damages actually suffered are greater than the law will compensate. Therefore, in contract actions, the doctrine of avoidable consequences is only a statement about how damages will be measured." (Emphasis supplied).

From the above statement of law it will appear clear that the non-defaulting party is not expected to take steps which would injure innocent persons. If so, then steps taken by him in performance or discharge of his statutory duty also cannot be weighed against him. In substance the question in each case would be one of the reasonableness of action taken by the non-defaulting party.

Here the material on record clearly shows that internal coffee prices in the year- 1952, particularly from March to October 1952, had soared very high on account of malpractices indulged in by coffee dealers and even the Government of India felt itself very much concerned about it

and suggestions had been made by Government officials as well as by the Members of the Coffee Board to take steps to bring down the coffee prices at reasonable level in the interest of both the trade as well as the consumer and, in fact, several measures, including the step of accepting lower bids in preference to the higher bids, with a view to regulate coffee prices were taken by the Coffee Board pursuant to the Government's directive in that behalf. Clearly, these measures were being taken by the Board in discharge of their main function and duty to maintain the coffee prices at proper level in the interest of all concerned, particularly the consumer and were not directed against the defaulting dealers at the concerned pool auction. In fact, the evidence of Kuttalaingam Pillai (PW3), the Chief Coffee Marketing Officer, has been that before the commencement of the "pool auction" on that day he had issued oral warning to the bidders that Government of India was concerned about the increase in coffee prices and that they should not try to push up prices and corner stocks and M. L. Gopal Setty (D.W. 1) has admitted that Chief Coffee Marketing Officer had given a warning that the higher bids will not be accepted. Therefore, when in spite of such warning being issued unnecessarily higher bids were given exceeding the average prices prevailing in the month of September 1952, (which themselves were high), the Chief Coffee Marketing Officer decided to accept lower bids in preference to the higher ones. It was in these circumstances that at the re-sale held on December 23, 1952 the prices realised were lower than the

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appellants' bids which had been accepted at the "pool auction" held on October 7, 1952. It must be stated here that at the re-sale admittedly only the highest bids were accepted. So it is not as if at the re-sale lower bids were deliberately accepted to enhance the loss. It is impossible to subscribe to the proposition that the Board should have maintained the high price level at the cost of the consumers merely with a view to see that the defaulting bidders did not suffer any loss on re-sale. The loss arising on the re-sale, therefore, cannot be regarded as "unreal" loss. The attack of the appellants against the grant of damages to the respondent on this ground is clearly unsustainable.

As regards the alleged delay in holding the re-sale it must be observed that both the trial court as well as the High Court have taken the view that the same was held within reasonable time at the next "pool auction" conducted in the normal course. The results of the concerned "pool auction" were declared some time after 2 P.M. on October 8, 1952. The period of 17 days (14 days initial period plus 3 days of grace for taking delivery) expired on October 26, 1952, but the evidence on record shows that there was a general request on behalf of the successful bidders for extension of time for making payment and taking delivery and such extension had been granted by the Board upto November 10, 1952 by issuing a circular. We have already held that there was no valid retraction of bids by the appellants and to their knowledge their retraction had been rejected by the Board on October 8, 1952 itself. That the appellants were interested in the extension granted by the Board becomes evident from their telegram dated October 22, 1952 (Ex. A - 129) seeking confirmation of the extension. After November 10, 1952. some reasonable notice of re-sale would have to be issued, so the defaulted coffee could not be put up for sale in the pool auction that was held in the month of November, 1952. The next pool auction was to be held in December, 1952

and, therefore, after issuing notice of re-sale on December 18, 1952 the re-sale was held by conducting a pool auction on December 23, 1952. In our view, both the Courts were right in taking the view that the re-sale had been held within the reasonable time.

Since all the contentions urged by counsel for the appellants have failed, the appeals are dismissed with costs.

P.B.R.

Appeals dismissed.

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JUDIS