

1968 SCC OnLine Gau 26 : AIR 1969 Assam & Ngld 10

Assam and Nagaland High Court
(BEFORE S.K. DUTTA, C.J. AND M.C. PATHAK, J.)

Tapesh Chandra Bagchi ... Petitioner;
Versus

United Bank of India Ltd. and others ... Opposite Parties.
Civil Revn. No. 30 of 1968
Decided on July 29, 1968



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The Judgment of the Court was delivered by

PATHAK, J.:— This is a revision petition under Section 115 of the CPC, by which the petitioner has challenged the order dated 4-4-1968 passed by the learned Assistant District Judge, Dibrugarh, in Title Execution Case No. 16 of 1964.

2. The facts of the case in brief are as follows:—

3. Opposite Party No. 1, the United Bank of India, Ltd., filed a mortgage suit being Title Suit No. 13 of 1956 against Asit Chandra Bagchi and others for recovery of Rs. 2,24,011-12-6 on account of loan with interest. The suit was decreed on compromise on 27-5-1958 for Rs. 2,24,011-78 nP. in terms of the compromise petition filed in the suit. The terms of the compromise inter alia were that the decretal amount with future interest and costs would be paid in course of five years subject to a minimum annual instalment of Rs. 42,000 together with interest; that the defendants would keep Phukanbari T.E. running at their own cost and fully insured against Toss by fire or otherwise and that in default of payment or payment of any one of the annual instalments or failure of the observance of the terms mentioned in the compromise decree, the whole of the decretal amount would be due by the defendants to the plaintiff-Bank who would be at liberty to execute the decree against the defendants and to bring the mortgage properties to sale. A final mortgage decree was also passed embodying the terms of the compromise petition. The judgment debtors having failed to satisfy the decree, the decree-holder put the decree into execution in Title Execution Case No. 16 of 1964. In the execution case, the Phukanbari T.E. containing 3421B 3K 15L of land with trees, buildings, factory houses, leaf-houses, machineries etc., were brought to sale. The judgment debtors filed an objection before the executing Court on a number of grounds, viz., that the sale proclamation was not in accordance with law, that in the sale proclamation the decretal amount was wrongly shown and that no notice was served upon some of the judgment debtors and so on. The objection was, however, rejected by the executing Court and the judgment debtors preferred an appeal being M.A. (F) No. 33 of 1964, which was dismissed by the High Court. Thereafter, the judgment debtors filed another petition on 21-9-1967 raising several objections to the sale which was also rejected by the executing Court by its order dated 23-9-1962.

4. By his order dated 8-9-1967 the learned Assistant District Judge, Dibrugarh, sent the sale papers to the Munsiff, Dibrugarh for conducting the sale on 25-9-1967,

and to report on 30-9-1967. Accordingly the auction was held on 25-9-1967 and continued till 30-9-1967, on which date the sale was knocked down at the highest bid of Rs. 2,38,000 offered by Abhayajan Tea Company (P) Ltd., Opposite Party No. 4. The deposit of twenty five per cent of the bid money was however not made to the learned Munsiff, the officer conducting the sale. The papers were sent by the officer conducting the sale the same day to the learned Assistant District Judge. Before the executing Court, the petitioner judgment-debtor filed a petition on the same date raising a number of objections to the sale



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and praying that the highest bid which was too low should not be accepted and fresh proclamation of sale should be issued and the auction purchaser also submitted a petition before the executing Court praying for time till 3-10-1962 to deposit twenty five per cent of the bid money as he was not able to deposit the same on that day because that was a Saturday and the Bank was closed early.

5. On the same dates, that is, on 30-9-1967 the learned executing Court passed an order on his petition directing the auction purchaser to deposit twenty five per cent of the bid money on 6-11-1967, that is, on the reopening of the civil Court after the Puja Vacation. On the petition filed by the judgment debtor, the Court ordered for putting up the papers for orders on 6-11-1967. Against the said order dated 8-9-1967, the petitioner moved the High Court in Civil Revision No. 99 of 1967. The High Court by its order dated 23-1-68 passed in Civil Revision No. 99 of 1967 remanded the case and directed the learned Assistant District Judge to first dispose of the two petitions filed by the judgment debtors and the auction purchaser and then to come to a decision whether the money was to be accepted or not and after coming to such a decision he should act accordingly. The matter went back to the learned Assistant District Judge, who by his order dated 4-4-1968 found that the sale was duly conducted and there was nothing on the record to show that there was any fraud or collusion and he held that the money could be accepted and by the same order the learned Assistant District Judge formally accepted the highest bid and declared the highest bidder Abhayjan Tea Company (P) Ltd., as the purchaser and ordered it to deposit twenty five per cent of the sale money, which was deposited on the same date. The auction purchaser also prayed for permission of the Court to deposit file entire purchase money which the Court permitted. This order of the learned Assistant District Judge is questioned in this revision petition.

6. Mr. B. Islam, the learned counsel for the judgment-debtor-petitioner, has submitted that as soon as the sale is knocked down in the auction sale in favour of a bidder he is declared a purchaser and he must immediately thereafter pay a deposit of twenty five per cent on the amount of his purchase-money to the officer conducting the sale as required under Rule 84, Order 21 of the CPC; and in the instant case the auction purchaser having failed to pay the deposit on the same date, the sale is a nullity inasmuch as the provisions of R. 84, Order 21 of the CPC are mandatory. He has further submitted that the Court has no jurisdiction to extend the time for paying the deposit of twenty five per cent on the amount of the purchase-money. As no deposit was made by the auction purchaser, the property should have been re-sold forthwith as required under Rule 84.

7. Mr. S.M. Lahiri, the learned counsel for the auction-purchaser, has submitted that the deposit of the twenty-five per cent of the purchase money has to be paid only when the Court formally accepts the bid and declares the purchaser. In the instant case, the bid was formally accepted and the purchaser declared by the Court only on 4

-4-1968 and on the same date the deposit was made and as such there was no violation of the provisions of Order 21, Rule 84 of the CPC.

8. Alternatively, it has been submitted that even if it is held that the deposit was to be paid on 30-9-1967, in view of the peculiar facts and circumstances of the case, the Court was justified in extending the time till the reopening date of the Civil Court after the Puja Vacation.

9. The Supreme Court in the case of *Manilal Mohanlal v. Sayed Ahmed*, AIR 1954 SC 349, has laid down as follows:—

“Having examined the language of the relevant rules and the judicial decisions bearing upon the subject, we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory; and upon non-compliance with these provisions, there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Nonpayment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.”

10. It is, therefore, a settled law that the provisions of Order 21, Rule 84 of the CPC, are mandatory and non-compliance thereof will make the sale a nullity.

11. The point that falls for determination in the case is whether the deposit of twenty-five per cent on the amount of purchase money is to be paid immediately after the sale is knocked down by the officer conducting the sale in favour or the bidder or it is to be paid after the bid list is forwarded to the Court and the Court formally accepts the bid and declares the purchaser. In other words, whether, as soon as the sale is knocked down in favour; of the highest bidder by the officer conducting the sale and the purchaser declared, it amount to declaration as required under



Rule 84 and the deposit in question has to be made immediately thereafter to the officer conducting the sale, or this deposit has to be made only after the executing Court formally accepts the bid and declares the purchaser. The language of Rules 84 and 85, Order 31 of the CPC, has to be carefully examined.

12. Order 21, Rules 84 and 85 of the CPC, run as follows:—

“84. Deposit by purchaser and resale on default.— (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be resold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under Rule 72, the Court may dispense with the requirement of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the

property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under Rule 72."

13. Under Rule 84, a deposit of twenty-five per cent on the amount of purchase money has to be paid to the officer or other person conducting the sale immediately after the person is declared to be the purchaser and in default of such deposit, the property shall forthwith be resold. Rule 84 speaks of a deposit, the amount of which is fixed at twenty-five per cent on the amount of the purchase-money and the deposit is to be paid to the officer or other person conducting the sale. So it appears that this is only a deposit to be paid by the person in whose favour the sale has been knocked down and who has been declared the purchaser by the officer conducting the sale.

14. On the other hand, Rule 85 lays down that the full amount of the purchase money payable shall be paid by the purchaser into Court. Rule 85 speaks of full amount of purchase money payable, whereas R. 84 speaks of deposit of 25 per cent on the amount of purchase money. Rule 84 also speaks of paying the deposit to the officer conducting the sale, whereas Rule 85 speaks of payment of the full amount of the purchase money into Court.

15. On a comparison of the language of the two rules, I find that this deposit has to be paid to the officer conducting the sale as a security before the bid is formally accepted and the purchaser declared by the Court and on such acceptance and declaration only the sale becomes complete as provided under R. 185 of the Civil Rules and Orders of the High Court of Assam and Nagaland.

16. The reason for the difference in the language of the two rules, in my opinion, is very clear. The deposit of twenty-five per cent on the amount of purchase money has to be paid by the person who is declared to be the highest Bidder and purchaser by the officer conducting the sale because in the bid so accepted is not accompanied by the deposit, such a bid cannot be placed before the Court for formal acceptance and declaration of the purchaser. A bid accepted by the officer conducting the sale can be placed for formal acceptance and for declaration of the purchaser by the Court, only when it is accompanied by the deposit necessary under the rule, otherwise it becomes an empty offer which cannot even be considered for acceptance by the Court.

17. Another reason why this deposit of 25 per cent on the amount of the purchase money has to be paid to the officer conducting the sale immediately after the sale is knocked down and purchaser declared by the officer conducting the sale is that it safeguards against reckless or collusive bid.

18. This view is also supported by the decision in the case of *Ebadullah Khan v. Allahabad Municipality*, AIR 1950 All 450, wherein it has been held that as soon as it is found that no higher bidder is forthcoming, the coming can declare the highest bidder and accept and conclude the sale and his mere recognition of the position that a certain person is the highest bidder by itself constitutes a "declaration" of the fact that he is the highest bidder and no formal or separate order is necessary to constitute the "declaration".

19. Mr. Lahiri, the learned counsel for the auction-purchaser, has submitted that the officer conducting the sale in the instant case being not the executing Court, must be held to be only the recorder of bids and his function is ministerial and that no sale was complete till the Court formally accepts it and declares the purchaser under Order 21, Rule 84 of the CPC. In this connection he has referred to Rule 185 of the Civil Rules and Orders of the High Court of Assam and Nagaland. These rules came into force with effect from 16th August, 1967, on which date these were published in the Assam Gazette.

20. Rule 185 of the said Rules is as follows:—

“Except as regards property of the kind mentioned in Rule 187, sales in execution of the decrees of any Court shall be conducted in that Court by the Nazir or other officer of the Court or by such other person as the Court may appoint in this behalf in the immediate presence of the presiding Judge. Where this is not possible, sales may be held in another place within the Court premises to be selected by the presiding judge; provided that the Court executing the decree may, if it sees fit, for reasons to be specified in writing, direct in the interest of the parties that the sale be held at any other time and place within its jurisdiction



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and when acting under this last-mentioned proviso, shall accept for good reasons to be contrary, give preference as regards choice of time and place to the wishes of the judgment-debtor.

Note 1.—An order appointing an officer or other person to conduct a sale under O. '22', R. 65, shall be in writing.

Note 2.—When sales at district headquarters are not held in the immediate presence of presiding Judges, in their own Courts, they may be held at any other place in the Court premises determined by the District Judge in consultation with the presiding Judges of other Courts, or any of them, as he thinks fit.

Note 3.—The person conducting the sale is only a recorder of bids and his function ministerial. All bids must be placed before the presiding Judge who shall not 'acceptance or rejection'. No sale is complete till the Court formally accepts the bid and declares the purchaser under O. 21, R. 84."

(Apparently, there are some printing mistakes in the underlined (here into ' ') words in Notes 1 and 3 above.)

21. From Note 3 in the above rule, it is found that the person conducting the sale is only a recorder of bids and his function is ministerial and no sale will be complete until the Court formally accepts the bid and declares the purchaser under O. 21, R. 84 of the CPC. No doubt the sale will be complete only when the Court formally accepts the bid and declares the purchaser and the time for payment in full of the purchase money under Rule 85 will run from the date of the completion of sale. When the sale becomes complete, rights and liabilities of the purchaser will accrue. But the deposit to be made under Rule 84 is before the sale is complete and so this deposit is to be paid to the officer or other person conducting the sale. In the above-mentioned case, the Supreme Court has held that there cannot be any sale in favour of purchaser without depositing twenty-five per cent of the purchase money.

22. On a consideration of the language used in Order 21, Rules 84 and 85 and also in Rule 86 of the CPC, I am clearly of the opinion that as soon as it is found that no higher bidder is forthcoming, the officer conducting the sale can declare the highest bidder and accept and conclude the sale. The mere recognition of the position that a certain person is the highest bidder by itself constitutes a declaration of the fact that he is the highest bidder and no form or separate order by the Court is necessary to constitute "the declaration" for the purpose of making the deposit of twenty-five per cent on the amount of his purchase money to the officer conducting the sale as prescribed in Rule 84. In the circumstances, I hold that as in the instant case the sale was knocked down in favour of the auction-purchaser on 29-9-1967, but the deposit of twenty-five per cent on the amount of the purchase money, as required under Rule 84, was not made to the officer conducting the sale, there was no sale in the eye of law for final acceptance by the Court. The learned executing Court also could not accept the

highest bid on 4-4-1968 and make a declaration of the purchaser inasmuch as when he considered the bid for acceptance it was not accompanied by the deposit of twenty-five per cent on the amount of purchase money paid to the officer conducting the sale. The order dated 30-9-1967 allowing time to pay the deposit till 6-11-1967 is also illegal. The Court has no jurisdiction to extend the time for paying the deposit in question to the officer conducting the sale. On failure to pay the deposit as required under Rule 84 immediately after the sale was knocked down, and purchaser declared, the property should have been put to resale as required under R. 84 and this was not done in the instant case. Considering the entire facts and circumstances of the case, I hold that the order dated 4-4-1968 passed by the learned Assistant District Judge is bad in law and it is set aside. The Assistant District judge shall now put the property to resale in accordance with law. In the result, the petition is allowed, but in view of the facts and circumstances of the case, I make no order as to costs.

23. DUTTA, C.J.:— I agree.

RGD

24. *Petition allowed.*

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