

Jaswantlal Natvarlal Thakkar

Vs

Sushilaben Manilal Dangarwala and Others

Civil Appeal No.907 of 1975

(S. Ranganathan, N.M. Kasliwal, S.C. Agarwal JJ)

07.12.1990

JUDGMENT

1. The appellant has preferred this appeal from the order of the Gujarat High Court in L.P.A. No. 297 of 1974. The Division Bench of the High Court, by the said order, confirmed an order of the learned single Judge who had, in turn, confirmed an order passed by the executing court rejecting the appellant's application under O. 21, R. 90 of the Code of Civil Procedure. The question which engaged the attention of the learned single Judge as well as the Division Bench was primarily the question as to whether the appellant was entitled to maintain the application under O. 21, R. 90 in view of the fact that a petition for adjudicating him an insolvent had been preferred and had subsequently been ordered. The application filed by the appellant under O. 21, R. 90 was dated 27-8-69 on which date there was no order of adjudication against him. However, an insolvency petition had been preferred against him on 24-6-68 and the adjudication order was passed on 7-8-80. The High Court has taken the view that the order of adjudication relates back to the date of the presentation of the insolvency petition and that the effect thereof was to take away the petitioner's locus standi to maintain an application under O. 21, R. 90. According to the High Court, such an application could, if at all, have been presented only by the Official Receiver. In coming to this conclusion, the Gujarat High Court followed certain earlier decisions of the Bombay High Court and dissented from a contrary view taken by the Madras High Court in a number of decisions of that Court. Mr. Dholakia, learned counsel for the appellant sought to urge before us that the Madras view is preferable to the Bombay view and that we should accordingly allow the appeal.

2. We, however, find it unnecessary to go into this question because the courts have also gone into application under O. 21, R. 90 on its merits. Though the Division Bench did not express any specific and clear view, the learned single Judge as well as the executing court took a concurrent view in this matter and rejected the application on its merits. We have examined all the circumstances and come to the conclusion that there was no material irregularity or illegality which vitiated the impugned sale in terms of the provisions of O. 21, R. 20, as applicable in Gujarat jurisdiction.

3. Mr. Dholakia submitted before us that, in this case, the property had been purchased at the court auction by the decree holders. For effecting this purchase, the decree holders had applied to the court for permission under O. 21, R. 72 of the Code of Civil Procedure. The executing court gave the decree holders permission not only to bid the auction but also to bid at a price equivalent to 80 per cent of the upset price that had been fixed earlier for the auction and this had been done without any notice to the petitioner. Mr. Dholakia contended that this constitutes a material irregularity which vitiated the sale. The High Court took the view that a notice- to the judgment debtor was not

mandatory under O. 21, R. 72. Learned counsel, however, invited our attention to the decision of the Madras High Court in G. Subramania Mudaliar v. The Ideal Finance Corporation, Partnership Firm, AIR 1977 Madras 358 and of the Andhra High Court in Puttaparatti Atchamma v. T. Bayanna, AIR 1969 AP 196 and submitted that a notice to the judgment debtor is necessary before permission is granted under O. 21, R. 72 particularly when the upset price is proposed to be reduced. We are inclined to agree with this submission of the learned counsel but this will not solve the problem of the appellant. For, under O. 21, R. 90 it is not sufficient for the appellant to contend that there was an illegality or irregularity in the conduct of the sale; he must also prove by adducing sufficient facts that some substantial injury has been caused to the petitioner as a result of the order under O. 21, R.72 having been passed without such notice. We have been taken through the relevant facts in detail by Sri Dholakia but we are unable to find any such overwhelming circumstances as can enable us to hold that this irregularity was such as has caused substantial injury to the appellant within the meaning of the rule in the circumstances' of the case.

4. Having gone into the matter at length we are unable to find any grounds to interfere with the decision of the courts' below to dismiss the application under O. 21, R. 90. This appeal therefore fails and is dismissed. However, we make no order as to costs.

Appeal dismissed.

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