

D. S. Chohan and Another

Vs

State Bank of Patiala

Civil Appeals Nos. ... of 1996 (arising out of Slps (C) Nos. 16077-78 of 1995

(S.C. Agarwal, G.T. Nanavati JJ)

26.04.1996

ORDER

1. Leave granted.

2. These appeals arise out of proceedings for execution of a decree passed in favour of the respondent Bank. In the said execution proceedings the moveable and immovable properties of the appellants which were mortgaged with the respondent were attached and were ordered to be sold. Earlier an auction was held for sale of all the properties in one lot. The upset price of Rs. 13,67,750 was fixed by the court and the highest bid that was received in the auction was for Rs. 6,50,000. Thereafter at the request of the respondent, it was decided to sell the properties in two lots, i.e., moveable in one lot and immovable in another lot. Fresh auction was held for moveable and immovable properties separately. Insofar as the sale of moveable property is concerned, the sale has been confirmed and no appeal was filed against the said order. As regards the sale of immovable property, it appears that the respondent, being the mortgagee decree-holder, had applied before the court for permission to make the bid under Order 21, Rule 72-A CPC. Such permission was granted to the respondent by the court by order dated 2-1-1981. Although in the application the respondent had submitted that the reserve price may not be fixed, there is no consideration of the said prayer of a the respondent in the said order and no reasons have been given for not fixing the reserve price in the sale proclamation. In pursuance of the order dated 2-1-1981 the respondent participated in the auction and the bid of the respondent for Rs. 6,75,000 was accepted. An objection was raised by the appellants against the acceptance of the said bid of the respondent on the ground that there was non-compliance with the mandatory provisions of Order 21, Rule 72-A CPC. The said objection was rejected by the learned Single Judge and the appeal filed by the appellants has been dismissed by the Division Bench of the High Court by the impugned judgment.

3. In view of the specific requirement contained in sub-rule (2) of Rule 72-A of Order 21 CPC that in cases where leave to bid is granted to the mortgagee, the Court shall fix a reserve price as regards the mortgagee and unless the Court otherwise directs the said reserve price has to be in consonance with requirement of clauses (a) and (h), it was incumbent for the Court to fix the reserve price. In the order dated 2-1-1981 the Court, while permitting the respondent mortgagee to make the bid, did not give any direction regarding fixing the reserve price. The sale in favour of the respondent having been made in violation of the mandatory provisions of Order 21, Rule 72-A (2) CPC cannot be upheld and has to be set aside.

4. In the result, the appeals are allowed, the impugned judgment of the High Court as well as the order passed by the learned Single Judge are set aside. The learned Judge will take up the execution proceedings and proceed with the sale of the immoveable property in accordance with law. No

orders as to costs.