

SUPREME COURT OF INDIA

Deen Dayal

Vs.

Baldev Prasad

(V Khare and R Sethi JJ.)

25.02.1999

ORDER

1. The appellant herein is Judgment-debtor. The respondent obtained a decree on 19-9-54 for recovery of Rupees 800/- with pendente lite and future interest at the rate of 6%. After obtaining decree, the decree holder put the decree in execution. In the execution proceeding the property of the Judgment-debtor was put for sale at an auction fixed by the Court. In that auction the decree holder purchased the property. The Judgment-debtor deposited the decretal amount on 10-5-66. In view of such deposit, the executing Court struck off the execution. It is at this state the decree holder gave an application under Section 47 of the CPC for setting aside the order striking off the execution. This application was treated by the executing Court as an application for review and as such the same was rejected. The decree holder thereafter filed an appeal and the appellate Court found the order passed by the executing Court as erroneous, thus set aside the said order. This order was affirmed by the High Court. It is against this order the Judgment-debtor has come to this Court.

2. The only argument raised by learned Counsel for the appellant was that since the decree holder was not permitted by the Court to offer bid, the auction sale of the property in his favour was erroneous. We have perused the record and find that no such objection was taken either before the executing Court or before the first appellate Court or the second appellate Court. This question being a mixed question of fact and law cannot be permitted to be raised for the first time in this Court. Since no other point has been pressed, the appeal is, accordingly, dismissed. No costs.