

ALLAHABAD HIGH COURT

Nawal Kishore

Vs.

Buttu Mal

(Sulaiman, CJ , Ganga Nath J.)

24.10.1934

JUDGMENT

Sulaiman, CJ.

1. This is a decree-holders' appeal from an order confirming the sale. The property was sold at an auction on 9th October 1930, for ₹ 2,325, and was purchased by the respondent, Buttu Mal. The auction-purchaser deposited 25 per cent as required by Order 21, Rule 84, immediately, but he did not deposit the balance of the purchase money within 15 days as required by Rule 85. Possibly the reason was that an application was filed on behalf of the judgment-debtor immediately to have the sale set aside. This application remained pending for a long time and was ultimately disposed of on 18th November 1932. Previous to this date the decree-holder obtained the permission of the Court on 18th July 1931, to deposit the balance in Court and he deposited the remaining three-fourths on 27th July 1931. The decree-holder however applied that the deposit had not been made in accordance with Rule 85 and that the property should be re-sold. The learned Subordinate Judge first allowed the application *ex parte*, but later on the application of the auction-purchaser dismissed the decree-holder's application and confirmed the sale. He relied on an observation made in *Basawan Dube v. Anpurna Kunwar*¹ It is contended before us that the Subordinate Judge had no jurisdiction to extend the time and that, when the default was made in depositing the balance of the amount as required by Rule 85, the Court ought to have ordered the re-sale of the property, and that the only discretion is as regards the forfeiture of the deposit of 25 per cent. This contention is obviously well founded. Rule 85 requires that the full amount of the purchase money shall be paid by the purchaser into Court before the Court closes on the 15th day from the sale of the property. Rule 86 also requires that in default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit after defraying the expenditure, be forfeited to Government and the property shall be re-sold.

2. In *Basawan Dube v. Anpurna Kunwar* no appeal lay to the High Court and there was no ground for interference in revision. It might not therefore have been necessary to decide the

question whether the Court below had erred in accepting the deposit beyond time, but the observation to that effect was certainly wrong and not warranted by the language of Order 21, Rule 86. This case must be deemed to have been overruled by implication of a Division Bench ruling of this Court in *Lala Lachman Narain v. Chattar*

¹1926 All. 509

³Ex. S.A. No. 1393 of 1928

²1926 All. 509

*Singh*³ in which it was clearly held that the discretion was confined to the forfeiture and not to the re-sale of the property. We accordingly allow this appeal and setting aside the sale of 9th October 1930, direct that proceed-be taken for re-sale. The appellants will have the costs from auction-purchaser, Buttu Mal in both Courts. The appellants are not entitled to refund of court-fees already paid.

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