

ALLAHABAD HIGH COURT

Bawan Ram

Vs.

Kunj Behari Lal

Civil Revn. No. 946 of 1959. , against judgment of Civil J. Etawah

(V. Bhargava, J.)

01.08.1959. 19.05.1960

ORDER

V. Bhargava, J

I have heard learned counsel for the applicants in this revision by which the applicants challenge an order of an execution court dismissing an objection filed under Order 21, Rule 90, C.P.C. because of the failure of the applicants to furnish security within time. The newly substituted proviso to Order 21, Rule 90, C.P.C. by this Court lays down inter alia that

"no application to set aside a sale shall be entertained unless the applicant deposits such amount not exceeding twelve and half percent of the sum realised by the sale or furnishes such security as the Court may, in its discretion, fix, except when the Court, for reasons to be recorded, dispenses with the requirements of this clause."

In this case, the sale was held on 14th February, 1959. The application to set aside the sale under Order 21, Rule 90, C.P.C. had to be filed at the latest by 16th March, 1959, and either 12% per cent of the amount had to be deposited or security had to be furnished unless the applicants obtained an order dispensing with these requirements. The applicants, on 14th March, 1959, presented an application, praying that the requirements be dispensed with but that application was rejected the same day. The applicants did not either deposit the amount or furnish any security upto the 16th of March, 1959, when the limitation expired. Security was furnished on 21st March, 1959, but protection was sought on the basis of the order of the court dated 14th March, 1959, granting time to the applicants to furnish security by the 21st of March, 1959. The court had no power to extend the time. The provisions of the clause of the proviso referred to above debar a court from entertaining an objection unless the requirement of this clause of depositing the amount or furnishing security is complied with. On 14th March, 1959, therefore, when the objection was filed, it could not be entertained validly by the court and when, on 16th

March, 1959, the time for filing the objection expired, it became thereafter an invalid objection. If the requirement of the clause had been complied with within the time within which the objection could be filed, it could have been held that the objection filed earlier might be treated as filed at the time when the requirement of the clause had been complied with. In the present case, there was no compliance within the time within which the objection could have been validly filed and subsequent compliance does not save limitation as the court had no power of extending the time. Learned counsel, in this connection, drew my attention to a decision of a Full Bench of the Patna High Court in *Brij Behari Lal v. Firm Srinivas Ram*¹, and urged that, on the principle laid down there it should be held that, under the proviso, no time is prescribed for furnishing the security and, if the security is furnished before the admission of the petition, the petition cannot be rejected. That decision however, cannot apply as the language of the proviso applicable to courts under the Patna High Court is different from the language of the proviso as it applies to the courts subordinate to this Court. The proviso introduced by the Patna High Court only laid a bar to the admission of a petition and, consequently, if there was compliance with the proviso before admission, it had to be held that it was sufficient compliance. The proviso, as introduced by this Court on the other hand, bars entertainment of an objection altogether and, consequently, if the requirements, of the proviso are not complied with by the time upto which the objection can be legally entertained, the objection cannot thereafter be validly filed, nor can the security or deposit be accepted.

2. There is no force in this revision. It is dismissed with costs.

Revision dismissed.

¹ AIR 1939 Pat 248