

MADHYA PRADESH HIGH COURT

Progressive Industrial Enterprises

Vs.

Bank of Baroda

C.R. No. 96 of 1988

(S.K. Dubey, J.)

03.01.1989

ORDER

S.K. Dubey, J.

1. This revision has been preferred by the auction-purchaser against the order of the Tenth Additional Judge, to the Court of District Judge, Indore dt. 01-03-1988 passed in Civil Execution Case No. 14 of 76, whereby the sale of the property which was confirmed has been declared as a nullity and the same has been ordered to be resold.

2. Brief facts leading to this revision petition are that the non-application No. 1 decree-holder Bank of Baroda obtained a decree against non-applicants Nos. 2, 3 and 4. In execution of the decree for realization of an amount of Rs. 61,008.22 p. the immovable property of the judgment-debtors was put to auction on 24th April, 82. The final bid was struck down at Rs. 62,000/- which was accepted in favor of the applicant auction-purchaser. The auction-purchaser deposited Rs. 10,000/- in cash towards 1/4th amount of the purchase money and for the balance of Rs. 5,500/- moved an application on the same day that because the Banks are closed he could not deposit the balance amount in cash and, therefore, he be allowed to deposit the said amount by cheque. The Court ordered to accept the said amount by cheque. The cheque which was handed over on 24th April, 1982 was encashed on 10th May, 1982. On 20th Jan., 84 the sale was confirmed in favor of the auction-purchaser as the balance amount was deposited in time. As the matter was pending before the Supreme Court the sale certificate could not be issued. On 02-09-1987 the auction-purchaser purchased the stamps for sale certificate and deposited it with the Court. On 09-10-87 sale certificate was issued which was registered. On 18-01-1988 for the first time the judgment-debtors raised an objection that as 25 per cent of the purchase money was not

deposited immediately on the same day in accordance with the provisions of Order 21, Rule 84, Civil Procedure Code the auction-purchaser committed a default and as such the sale in favor of the auction purchaser is a nullity and the property should be ordered to be resold.

3. After hearing the parties and the auction-purchaser the Executing Court, vide the impugned order dt. 01-03-1988 held that the sale in favor of the auction-purchaser is a nullity, because 25 per cent of the purchase money was not deposited on the same day after striking the bid in favor of the auction purchaser. It is this order which has been challenged by the auction-purchaser in revision.

4. Before me the parties did not raise any objection about the maintainability of the revision. Hence this revision is disposed of on merits. The contention of Shri K.L. Sethi learned counsel for the auction-purchaser is that Order 21, Rule 84, Civil Procedure Code do not prescribe any mode of payment or deposit and in this case the auction-purchaser deposited 25 per cent of the amount, out of that amount a part of the amount was deposited by cheque, which was accepted by the Court. Not only this, the sale was also confirmed in his favor and ultimately a sale certificate was issued. Payment by cheque is a valid payment under Section 6 of the Negotiable Instruments Act, after the presentation of the cheque when it is realized it relates back to the date of presentation. Shri Sethi placed reliance on the three Division Bench cases of Bombay, Madras and Gauhati High Courts reported in *(Kirloskar Bros. Ltd. v. Commr. of Income-tax, Bombay)*,¹ *(Mohideen Bi v. Khatoon Bi)*² and *(Socklatings Tea Co. (P) Ltd. v. Chairman, Board of Trustees, Gauhati)*.³ The learned counsel also contended that once the sale is confirmed, even if the decree for which in execution proceedings the property is put to auction is varied or reversed, the title which has been vested in the auction purchaser remains in tact. For this submission learned counsel placed reliance on a decision of the Apex Court reported in *AIR (Janak Raj v. Gurdial Singh)*⁴ and a decision of the Division Bench of this Court reported in *(Piarelal v. Bhagwati Prasad)*.⁵ Therefore, the executing Court committed an error in holding that sale is a nullity.

5. Shri Y.I. Mehta, learned counsel for the judgment-debtors contended that provisions of Order 21, Rule 84, Civil Procedure Code in respect of third parties are mandatory as 25 per cent of the amount of sale is to be deposited immediately by the purchaser when the auction is struck down in favor of the purchaser. The amount ought to have

been deposited in cash. As compliance was not made, all subsequent steps up to confirmation of sale and issuance of sale certificate are void and the sale is a nullity. When sale is a nullity the objection to sale can be raised at any time and in any proceedings, even in collateral proceedings. Learned counsel placed reliance on the cases of the Apex Court reported in (*Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud*)⁶ and (*Kiran Singh v. Chaman Paswan*)⁷ and other decisions of various High Courts reported in (*Hira Lal v. Mst. Champa*)⁸ (*Nand Lal v. Mst. Siddiquan*)⁹, (*Sardara Gurdit Singh v. Sardara Dharam Singh*)¹⁰ (*S.V. Kanakaraj v. Vijaya Bank, Mangalore*)¹¹ and (*Tapesh Chandra Bagehi v. United Bank of India Ltd.*)¹²

6. Shri D.K. Jain learned counsel for the Bank decree-holder submitted that the amount deposited by the auction-purchaser has not been withdrawn by the Bank decree-holder and further contended that as in accordance with Order 21, Rule 84, Civil Procedure Code the amount was not deposited, hence the Executing Court was right in declaring the sale as a nullity and for ordering resale.

7. After considering the respective submissions of the learned counsel and perusing the record I am of the opinion that this revision deserves to be dismissed. Order 21, Rule 84 of the Civil P. C., read as under : -

"84. Deposit by purchaser and re-sale on default. -(1) on every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the money under Rule 72 the Court may dispense with the requirements of this rule."

The Apex Court had an occasion to consider the provisions of Order 21. Rules 84, 85 and 86, Civil Procedure Code while considering the whole scheme of these provisions of the case of *Manilal Mohanlal Shah*, (*supra*), the Apex Court enunciated that the provisions regarding deposit of twenty-five per cent by the purchaser other than the decree-holder is mandatory, as the language of the Rule suggests. In para 11 of the judgment, the Apex Court observed as under :

"(11) Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favor of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all."

Therefore, the law is clear and it leaves no exception. The amount of twenty- five per cent of the purchase money has to be deposited on the same day. Admittedly in this case an amount of Rs. 5,500/- was not deposited in cash, but a cheque was handed over which was encashed on 10-05-82. Therefore, there was no compliance of Order 21, Rule 84(1) of the Civil Procedure Code, as 25 per cent of the amount of purchase money was not deposited immediately with the Officer conducting the sale immediately. Therefore, the question is whether in the facts and circumstances of the case deposit of Rs. 5,500/-, by cheque can be said to be a valid deposit? In my opinion it cannot, even though on the application of the auction - purchaser that cheque was accepted by the Court. The principle is acts of court should do no harm to a litigant (*actus curiae neminem gravabit*). Twenty-five per cent deposit cannot be accepted in cheque. It must be in cash.

8. The question of payment by cheque came up for consideration before the Allahabad High Court in case of *Hiralalh v. Mst. Champa (supra)*. After perusing the language of Order 21, Rules 84, and 85, the Allahabad High Court held that while the deposit of twenty-five per cent on the amount of the purchase money has to be made to the officer or other person conducting the sale, the balance of the purchase money had to be paid by the purchaser into Court. The handing over of the cheque, therefore, to the

auctioneers is not payment into court, nor could it be said that the handing over of the cheque is a deposit of the balance of the purchase money. The provisions of Order 21, Rule 85 of the Civil Procedure Code are not complied with in such a case and the sale in favor of the auction purchaser was declared to be illegal.

9. A learned single Judge of the Karnataka High Court while considering the language 'shall pay immediately a deposit of, used in Order 21, Rule 84, Civil Procedure Code and relying upon the case of the Apex Court in Manilal Mohanlal Shah (supra) held that 1/4th of bid amount should be deposited on the very same day when highest bid is accepted and the court has no jurisdiction, even by consent of parties, to give time to auction purchaser to tender bid amount as Rule 84 is mandatory one. The other cases relied by Shri Mehta in case of *Sardara Gurdit Singh v. Sardara Dharam Singh* (AIR 1976 Punjab and Haryana 271) (supra) and *Tapesh Chandra Bagehi v. United Bank of India Ltd.* (supra) are on the same lines.

10. This Court in case of *M/s. Gangavishan Heeralal v. Gopal Digambar Jain*,¹³ interpreted the word 'immediately' in Rule 84(1) of Order 21, Civil Procedure Code to mean 'within reasonable time' and observed that reasonable time depends on the facts and circumstances of each case. This case is also of no help to the applicant as in that case the bid was knocked down near about the close of Court hours and there was no time left to deposit the amount and in that case the Court held that twenty-five per cent of the amount be deposited within the time given by the court. It is clear from the record of the case that the amount of Rs. 5,500/- was not deposited immediately after the sale was made in favor of the auction purchaser. This is clear violation of Order 21, Rule 84(1), Civil Procedure Code as the provisions are mandatory and noncompliance with the Rule renders the sale a nullity. There is a reason behind the deposit if the bid accepted by the officer conducting the sale is not accompanied by the deposit of 25 per cent of the purchase amount it cannot be placed before the Court for formal acceptance and declaration of the purchaser (See AIR 1969 Assam 10). The Officer conducting the sale has no authority to extend the time for payment of deposit. In fact by acceptance of the cheque the time was extended for deposit. As held by the Apex Court failure to deposit the amount immediately as required by the Rule renders the sale proceedings a complete nullity and confirmation of sale and the issuance of sale certificate has no effect (See AIR 1954 Supreme Court 349). Consent or any order of the Court or not taking action in time will not make the sale a valid sale. As alluded above the sale in favor of the purchaser was ab void initio, because when the bid was

accepted the auction purchaser did not deposit 25 per cent of the purchase amount in accordance with Order 21, Rule 84, Civil Procedure Code

11. Therefore, in my opinion, the trial court has not committed any illegality so as to warrant interference in revision. The Executing Court was right in holding that the sale was a nullity and hence the property is to be resold. The Executing Court shall now take steps immediately to sell the property. The record of the Executing Court should be sent immediately so as to reach there before 25th Jan. 1989. Thereafter the Executing Court shall proceed in accordance with law. The parties shall appear before the Executing Court on 25th Jan. 1989. No fresh notice is necessary to parties in case.

12. Thus, the revision petition is dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1952 Bom 306
2. AIR 1966 Mad 435
3. 1983 Lab IC NOC 121 (Gau)
4. 1967 SC 608
5. 1969 MPLJ 17
6. AIR 1954 SC 349
7. AIR 1954 SC 340
8. AIR 1955 All 226
9. AIR 1957 All 558
10. AIR 1976 Pun and Har 271
11. AIR 1987 Karn 252
12. AIR 1969 Ass 10
13. AIR 1980 Mad Pra 119