

RAJASTHAN HIGH COURT

Pawan

Vs.

Bank of Baroda

Civil Revn. Petn. No. 54 of 2000

(N.P. Gupta, J.)

15.01.2001

ORDER

N.P. Gupta, J.

1. The matter comes up on application for impalement of Chandra Prakash as party non-petitioner so also on the application of Sri Chandra Prakash for vacating interim stay order. The learned counsel for the parties have no objection in impalement of Chandra Prakash as party non-petitioner in the revision. Accordingly that application is allowed and Chandra Prakash s/o Sri Shiraj Ji Jain, R/o Bhagwan Pura, Tehsil Mandal, District Bhilwara is impleaded as non-petitioner No.2.

2. Thereafter at the request of learned counsel for the parties instead of hearing On *ex parte* interim stay order, the revision petition itself has been heard finally.

3. By the impugned order the learned trial Court has refused the petitioner judgment-debtor's prayer made under Order 21, Rule 83 for setting aside the sale. A look at the provisions of Order 21, Rule 83, Civil Procedure Code would show that there under the judgment-debtor is entitled to request the Executing Court for postponement of the sale in certain contingencies namely that if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of decree may be raised by the mortgage or lease or private sale of such property or some part thereof or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale. As against this a look at the impugned order shows that the sale was sought to be set aside on the ground that the valuation of the property is more than Rs. 6,25,000/- while it has been knocked down for a sum of Rs. 1,90,000/-. Thus in substance the property was alleged to have been knocked down for inadequate price

and, therefore, it was desired that the property be allowed to be sold by the judgment-debtor or in the alternative the property be put to reaction.

4. The learned Executing Court by the detailed order found that the petitioner has not produced any material to show that the property has been knocked down for inadequate price. That apart the learned Executing Court has further observed that during the course of arguments, the objector was given an offer to the effect that he should deposit 5% of the highest bid amount by way of compensation (as contemplated by the provisions of Order 21, Rule 89) and to bear the expenses of fresh auction proceedings to the extent of Rs. 5,000/-, but the judgment-debtor declined for this, which according to the learned Executing Court shows that the objection of the judgment-debtor is not *bona fide*.

5. Before me the only ground contended is that the auction-purchaser did not deposit the balance 3/4 amount within a period of 15 days as required by Order 21, Rule 85, therefore, the sale is void.

6. As against this, the learned counsel for the judgment-debtor states that he had moved requisite application before the Executing Court for depositing the amount, but since the learned Presiding Officer was not available, the amount could not be deposited and that the entire amount had already been deposited as soon as the tender was passed. Suffice it to say that the contention raised is a question of fact as to whether the amount has been deposited or not, and if deposited whether in time or not, and if not deposited in time whether the purchaser had sufficient cause for the delay, and whether such a delay could be condoned or not ? All these questions cannot be allowed to be raised for the first time in this revision petition before me. Since no submissions have been made on merits of the grounds given by the learned Executing Court in passing the impugned order. I do not find any jurisdictional error in the impugned order. The revision petition is, therefore, dismissed.

Revision dismissed.