

(2010) 07 MP CK 0076

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2398 of 2003

ACME Papers Limited

APPELLANT

Vs

M.P. Financial Corporation and Another

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 92, Order 21 Rule 92(2)
Limitation Act, 1963 — Article 127, 14, 3, 5
State Financial Corporations Act, 1951 — Section 31, 32(7), 32(8)

Citation : (2010) ILR (MP) 56 : (2011) 1 MPHT 126 : (2010) 3 MPLJ 602

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

In this appeal preferred under Order 43 Rule 1(j) of the Code of Civil Procedure, 1908 the Appellant has challenged the order dated 29-10-2003 passed by the learned District Judge, Sehore in MJC No. 16/1985 whereby the application of the Appellant under Order 21 Rule 90 read with Section 151 of the CPC has been dismissed.

The facts leading to the present appeal are that the first Respondent, namely, M.P. Financial Corporation filed as Misc. Judicial Case No. 26/1982 u/s 31 of the State Financial Corporation Act, 1951 against the Appellant for sale of the mortgaged property. The said application was opposed by the Appellant by filing reply as contained in Annexure A-2, however, a direction was issued on 12-11-1984 for disposal of the hypothecated property u/s 32(7) of the said Act. Thereafter, the Respondent No. 1 also sought for publication of notices of auction for disposal of the property u/s 32(8) of the Act. Yet another application was moved on behalf of the Respondent No. 1 for sale proclamation under Order 21 Rule 66 of the CPC for land ad-measuring 62.2 Acres situated at Karbala in Distt.

Sehore including plants & machinery and building. The auction proceedings held on 19-9-1988, 20-9-1988 and 21-9-1988 did not materialize the sale of the aforesaid property, therefore, the Court below was of the view that further auction would be improper. However, vide order dated 22-9-1988 contained in Annexure A-5 the Respondent No. 1 was directed to file separate application for private sale and participation in the auction to offer bid. Thereafter, a Commissioner was appointed to furnish report as regards the property in dispute after spot-inspection. The Commissioner submitted its report on 16-8-1993. Thereafter, it is stated that a bid for a sum of Rs. 80,25,000/- was received from one Shri Ramgopal on 18-8-1993. Thereupon, a report was called from the District Registrar, Sehore with regard to the market value of the aforesaid 62.2 acres of land wherein the market value of the property was assessed at Rs. 2 lac per acre. The Court below vide its order dated 26-8-1993 adjourned the auction proceedings on the ground that the highest bidder of the property, namely, Shri Ramgopal did not appear to be bonafide purchaser and accordingly fresh advertisement was directed to be published in the daily newspapers of Indore and Bhopal.

The Respondent No. 1, MPFC, has not denied the objection raised by the Appellant before the Court below that the confirmation of the sale was stayed by the Delhi High Court vide order dated 5-7-1993. Submission of the Appellant is that despite there being orders of stay on the confirmation of sale, the auction proceedings were allowed to be continued by the Court below on 18-11-1997 to 22-11-1997 and bid was closed in favour of one Shri Shankarlal Laddha for a sum of Rs. 48,52,001/-. An objection as contained in Annexure A-11 was raised on behalf of the Appellant that despite there being stay on the confirmation of sale and that even before confirmation of the sale the auction purchaser had started demolishing the building, plant & machinery and scrap was being transported out of Sehore. Against the said wrongful removal of the building materials and machinery by the auction purchaser an FIR, Annexure A-12 was also lodged. However, the auction purchaser in connivance with the Respondent No. 1 did not deposit requisite 25% of the bid amount in the Court and the Court below, therefore, set aside the auction bid vide order dated 9-2-1998, Annexure A-16. As per the orders of the Court below the Appellant submitted the list of stolen properties on 27-4-1998, Annexure A-17.

It is submitted that vide order dated 20-1-1999 contained in Annexure A-21, the Court below directed to call for auction of the disputed properties and thereafter by order dated 3-4-1999, Annexure A-22, the sale warrant was directed to be issued. The Appellant moved an application for recall of the order dated 3-4-1999 and prayed for a direction to the Police Authorities to register the criminal case about the stolen properties. On the basis of the report of the Nazarat, the Court below vide order dated 13-8-1999, Annexure A-24, held that the last bid of Rs. 16,69,000/- so made by Respondent No. 2 Ajay Kumar and Brothers is to be concluded in their name as there is no possibility of other bid of higher amount.

Being aggrieved by order dated 13-8-1999 the Appellant approached this Court by filing a Civil Revision which was registered at Civil Revision No. 2177/1999. The said revision was dismissed on 22-4-2003 against which the Appellant filed a MCC No. 700/2003. The said MCC was also dismissed by this Court by Annexure A-27, dated 1-9-2003 holding that order impugned in the Civil Revision related to the acceptance of the bid and the same being an interlocutory order, the revision preferred by the Appellant was not maintainable as the remedy was available under Order 21 Rules 89 and 90 of the Code of Civil Procedure. Pursuant thereof, the Appellant filed application under Order 21 Rule 90 of the Code of Civil Procedure, which is filed as Annexure A-28 to the present appeal. It is contended that on 28-10-2003 the Respondent No. 1 filed reply to the said application and the Court below without granting sufficient opportunity to the Appellant to go through the reply, heard the matter next day on 29-10-2003 and dismissed the application of the Appellant under Order 21 Rule 90 of the CPC and directed for issuance of sale-certificate in favour of the auction purchaser. Being aggrieved by the order dated 29-10-2003 the Appellant is before this Court.

Learned Counsel for the Appellant submitted that in the present case the order impugned passed by the Court below is illegal. According to him, there had been no adequate price received and yet the auction has been confirmed by the Court below. The Court below while conducting the auction has committed serious illegalities.

On behalf of the Respondent No. 2 it is contended that application preferred by the Appellant under Order 21 Rule 90 of the CPC itself was barred by limitation. It is contended that once the application is barred by limitation, the order impugned is proper.

The rival submissions made on behalf of the parties are considered.

It is to be seen that the application under Order 21 Rule 90 was moved before the Court below against the auction on 24-9-2003 whereas the auction took place on 13-8-1999. The final bid was accepted and 25% of the amount was deposited and remaining 75% was also deposited on 17-8-1999. It is to be seen that for the purposes of moving application under Order 21 Rule 90 of the CPC the provisions as contained under Article 127 of the Limitation Act would be applicable and commencement of the period of limitation for the said purpose is the date of sale. Thus, the application filed beyond the period of limitation cannot be entertained.

Shri Rajesh Pancholi, Learned Counsel for the Appellant submitted that in the present case the Respondent has not taken a plea before the Court below that the application under Order 21 Rule 90 of the CPC was barred by limitation, therefore, now at this stage the Respondents cannot be permitted to raise the objection about the limitation. The Counsel has invited my attention to the decision rendered by the Apex Court in Nani Gopal Paul Vs. T. Prasad Singh and others, wherein it is laid down a view that the Court or the Appellate Court would

not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting Court sales. On the strength of the ratio laid down in the said case it is contended by him that if there are illegalities while conducting the auction sale then it may not be necessary to move application under Order 21 Rule 89 or 90 or u/s 48 of the CPC but the Court can suo motu take an action. Further submission of the Counsel for the Appellant is that since the Appellant was prosecuting the remedy before this Court by filing revision, therefore, that period has to be excluded in view of Section 14 of the Limitation Act.

Per contra, Shri Ravish Agrawal, learned Senior Counsel for the Respondent No. 2 submitted that by virtue of Section 3 of the Limitation Act even though the defence with regard to limitation is not set up still the application can be dismissed on the ground of limitation, if any, filed after the prescribed period of limitation.

By virtue of Article 127 of the Limitation Act the limitation prescribed for filing application for setting aside sale is 60 days from the date of sale. Admittedly, in the present case the sale has taken place on 13-8-1999 and the application for setting aside the sale was filed on 24-9-2003. I have carefully perused the decision rendered in Nani Gopal Paul (supra). In the said case, an appeal was preferred to the Division Bench of the High Court against the order of the learned Single Judge exercising the original jurisdiction and while deciding the said appeal the Division Bench came to the conclusion that the sale was vitiated due to the matter in which the Single Judge dealing with the Company Law matters passed the orders in his Chamber. The Division Bench came to the conclusion that though the property was sold for a sum of Rs. 60 lakhs but there had been certain other higher offers but same were not paid any heed and yet the auction was conducted. On that basis, the Apex Court held that once there are manifest illegalities in conducting the Court sale then the Court may interfere. In Nani Gupta Paul's case (supra), the Apex Court further held that as against the auction price of Rs. 60.00 lac only Rs. 5.00 lac were deposited and balance amount was assured to be deposited only after delivery of possession. That was found to be illegal. In the present case, the auction was held on 13-8-1999 and 25% of the auction price was deposited by the second Respondent and rest of the 75% was also deposited on 17-8-1999. Thus, in the present case whole of the amount was deposited and there was no illegality as such.

Apart from the aforesaid, whereas also in the present case against the auction held on 13-8-1999 a revision was preferred before this Court which was registered as Civil Revision No. 2177/1999. The said revision was admitted and further proceedings were stayed by order dated 24-9-1999. The revision was dismissed on 22-4-2003 holding that the civil revision is not the remedy but the remedy is available to the Appellant under Order 21 Rule 90 by moving an application for setting aside the sale. Thereafter, the Appellant filed application for recall of the order dated 22-4-2003 which was registered as MCC No. 700/2003. The order under revision dated 22-4-2003 was upheld and the MCC

was also dismissed. The record of the MCC was called by this Court for verification which revealed that it was filed on 13-8-2003. In the present case, the provisions as contained under Order 21 Rule 90 of the CPC do not empower to set aside the sale by proceeding suo motu. It provides for moving an application within a period of 60 days in view of Article 127 of the Act and as the limitation commences from the date of auction.

The Apex Court in *Ram Chandra Arya Vs. Man Singh and Another*, considered the limitation for filing application to set aside the sale. The aforesaid question was considered in the light of the fact whether a stranger to the suit being the auction purchaser of the judgment-debtor's immovable property in execution of an ex parte money decree would be entitled to a confirmation of sale under Order 21 Rule 92 of the Code of Civil Procedure. The Court while dealing with the said issue also held that the law makes ample provision for protection of the interest of the judgment-debtor, when his property is sold in execution. He can file application for setting aside sale under the provision of Order 21 Rule 90 of the Code of Civil Procedure. If no application is made and when such application was made and disallowed, the Court has no choice but to confirm the sale.

In *Challamane Huchha Gowda Vs. M.R. Tirumala and Another*, , Their Lordships of the Apex Court have explained the purpose behind Order 21 of the CPC and in Para 9, Their Lordships have held as under:

9. Execution is the enforcement, by the process of the Court of its orders and decrees. This is in furtherance of the inherent power of the Court to carry out its orders or decrees. Order 21 of CPC deals with the elaborate procedure pertaining to the execution of orders and decrees. Sale is one of the methods employed for execution. Rule 89 of Order 21 is the only means by which a judgment-debtor can escape from a sale, that has been validly carried out. Object of the rule is to provide a last opportunity to put an end to the dispute at the instance of judgment-debtor before the sale is confirmed by the Court and also to save his property from dispossession. Rule 89 postulates two conditions: they are depositing-- (1) of sum equal to five per cent of the purchase money to be paid to the purchaser, (2) of the amount specified in the proclamation of sales less any amount received by the decree holder since the date of such proclamation, in the Court. If these two conditions are satisfied, the Court shall make an order for setting aside the sale under Rule 92(2) of Order 21 of CPC on an application made to it. In other words, then there will be compliance of Court's order or decree that is sought to be executed. Because the purpose of the Rule 21 is to ensure the carrying out of the orders and decrees of the Court. Once the judgment-debtor carried out the order or decree of the Court, the execution proceedings will correspondingly come to an end. It is to be noted that the Rule does not provide that the application in a particular form shall be filed to set aside the sale. Even a memo with prayer for setting aside sale is sufficient compliance with the said Rule. Therefore, upon the satisfaction of the compliance of conditions as provided under Rule 89, it is mandatory upon Court to set aside

the sale under Rule 92. And the Court shall set aside the sale after giving notice under Rule 92(2) to all affected persons.

As we have seen, in the present case, the judgment-debtor has not deposited the amount under the decree, therefore, the Court proceeded to auction the property. On the basis of the facts as enumerated above, it is clear that the application was not filed within 60 days from the date the auction was held and thus, it is barred by limitation.

In this regard, the judgment passed in the case of Chandra Pal Singh Vs. Bharat Singh and Others, , is also relevant wherein the question of limitation of filing application under Order 21 Rule 90 of the CPC was taken into account and when the said application was held beyond the period of limitation, said application was dismissed on the ground of limitation.

The next question arises in the present case whether the Appellant shall be entitled to the benefit of Section 14 of the Limitation Act. The auction in the present case has taken place on 13-8-1999 and the civil revision was filed before this Court and this Court on 24-9-1999 directed that further proceedings shall remain stayed. Ultimately, the said revision was dismissed on 22-4-2003 by holding that the revision is not maintainable and remedy is under Order 21 Rule 90 yet the Appellant has not chosen to prefer any application immediately thereafter and within a reasonable period. On the contrary a review application was filed on 13-8-2003 which was also rejected on 1-9-2003 and then the application is preferred on 24-9-2003. In this background, if a party is claiming benefit of Section 14 as a wrong forum was chosen to file the civil proceedings which was not maintainable against the impugned order then as per Section 14 further requirement of said Section is that the said proceedings were chosen and were taken up with due diligence. No such thing is found in the present case. Mere prosecution of remedy by itself would not be sufficient to ignore the period of limitation spent in prosecuting the remedy before a wrong forum.

Section 5 of the Limitation Act shall have no application because Section 5 itself provides that if any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the Appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Thus, Section 5 itself excludes the extension of prescribed period in relation to application under Order 21 of the Code of Civil Procedure.

The question as such has to be considered in the light of Section 14 of the Act. It is to be seen that if the commencement of proceedings is before the period of limitation expires then there may be a question of applying Section 14 of the Limitation Act. Though initially the revision was preferred against the order dated 13-8-1999 within a period of limitation but ultimately when the said revision was dismissed on 22-4-2003, then review application was filed on 13-8-2003 which

was rejected on 1-9-2003, the filing of the review application was not within a period of limitation and was beyond the period of 60 days because the revision was dismissed on 22-4-2003 and the review was filed on 13-8-2003. The review application for recall of the order passed in revision itself was after the period of limitation has expired. Thus, there is no question that the proceedings were commenced before the limitation expired. Therefore, the benefit of Section 14 of the Act shall not be available. That apart, when this Court while dismissing the revision ultimately held that the civil revision is not maintainable as the remedy was available under Order 21 Rule 90 of the CPC then there was no justification and the reason to file the review application and that too after the period of limitation of 60 days. If the application would have been preferred immediately within 60 days from 22-4-2003 then the position would have been different. No application within 60 days was filed from 22-4-2003. On the contrary, review application was filed on 13-8-2003 when the period of 60 days limitation has already expired much before filing of review application for recall of the order dated 22-4-2003. It is to be seen that the Appellant filed successive applications before the Court; revision and then the review application when the revision itself was held to be not maintainable.

On behalf of the Respondent No. 2, it is contended that this Court while admitting the revision passed the order on 24-9-1999 wherein further proceedings were stayed. While staying the further proceedings no stay order was passed by this Court that the Appellant shall not file any application under Order 21 Rule 90 but despite that no effort was made by the Appellant to prefer any application. Therefore, the entertaining the revision by this Court will not give any benefit to the Appellant to extend the period of limitation of 60 days to file application under Order 21 Rule 90 of the CPC against the sale which has taken place on 13-8-1999.

This Court in *Brijkishore v. Kishore Singh and Anr.* 1972 MPLJ 719, has dealt with the issue relating to good cause when a competent Advocate/Counsel carefully gave an advice to a party to choose a forum and if the party acts on the said legal advice then even though a wrong forum is chosen under wrong advice of a Counsel then it will constitute a good cause. The Paragraph 5 from the said decision reads, thus:

At the very outset, the Learned Counsel for the decree-holders raised a preliminary objection that the appeal in the Lower Court was barred by time and that there was no good cause for extension of time u/s 5 read with Section 14 of the Limitation Act because, although the Appellant may have acted under the advice of legal practitioners in filing a review, it could not be said that he did so after obtaining such advice from competent legal practitioners who had taken reasonable care to ascertain the true legal position. In support of this contention, reliance is laced upon *Mariambai v. Hanifabai*. That the Appellant acted under the advice of legal practitioners is clear from the two affidavits filed in the case, one of them being from an Advocate, Shri Khakad. The question was not whether an

appeal lay against an order passed by the Court of first instance, The real question was whether the Appellant could claim to be the legal representative of the judgment-debtor to file an appeal against that order for the purpose of raising the question he did. In that sense, the question was not so straight or clear that only one answer could be given without any possible doubt or hesitation. Therefore, I am of the view that the advice given to the Appellant, on which he acted in filing a revision, is not one which could not have been given by any other competent and careful legal practitioner. That being so, the Lower Appeal Court was right in extending the time for filing the appeal to the extent necessary.

In this context, it would be relevant to see whether for the purposes of attracting the benefit of Section 14 of the Limitation Act is there any material produced before this Court that the Appellant has acted upon a wrong advice given by his Counsel after carefully going through the provision to prefer the revision. A close scrutiny of the record reveals that no material is placed on record in this regard. The Appellant has neither filed his affidavit nor has filed the affidavit of the Counsel to show that the civil revision against the order of sale dated 13-8-1999 was preferred in the High Court under a wrong legal advice. Therefore, in view of the law laid down by this Court in *Brijkishore* (supra), it cannot be presumed that the revision was preferred before this Court under a wrong advice. However, as this Court while dismissing the revision by its order dated 22-4-2003 has held that the civil revision is not maintainable then thereafter there is nothing on record to show that the Counsel for the Appellant again advised him to file review as according to him the application under Order 21 Rule 90 was not maintainable. In the absence of any material as such it is very difficult to conceive that a wrong forum was chosen by the Appellant due to any wrong advice of the Counsel which was given after due care and caution.

In the case of *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , the Apex Court has not only considered the scope of Sections 5 and 14 of the Limitation Act but has emphasized that even after sufficient cause has been shown a party is not entitled to the condonation of the delay as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court. If the sufficiency of cause is shown then this Court has to inquire whether in his discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bonafides may fall for consideration but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. Reliance is placed upon Para 12 of said decision, which is reproduced as below:

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise

of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bonafides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection, we may point out that considerations of bonafides or due diligence are always material and relevant when the Court is dealing with applications made u/s 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only u/s 5 without reference to Section 14. In the present case, there is no difficulty in holding that the discretion should be exercised in favour of the Appellant because apart from the general criticism made against the Appellant's lack of diligence during the period of limitation no other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial Commissioner rejected the Appellant's application for condonation of delay only on the ground that it was Appellant's duty to file the appeal as soon as possible within the period prescribed, and, that in our opinion, is not a valid ground.

The said aspect of the matter has been further considered by the Apex Court in *Ram Bhawan Singh and Others Vs. Jagdish and Others*, . The view which has been laid by Their Lordships in Para 7 of the decision is reproduced as under:

The first question that we have to decide is that of limitation. The delay of 1198 days according to the Appellants had occurred unwillingly and the Appellants had been prosecuting with due diligence the earlier proceedings before the appellate and the revisional authorities and on the basis of the advice given by their Counsel. There is no proper affidavit of either the Appellants or the Counsel in support of the application for condonation of delay. There is also no other material to indicate that the Appellants had exercised due diligence in working out their remedies and sought proper advice in the matter. When the party had no right of appeal, the proceedings instituted before the High Court challenging the judgment in the writ petition cannot be considered to be one in good faith. The subsequent proceedings are also not legal or valid. When the decision of the High Court in the writ petition was one quashing the orders of the appellate and the revisional authorities, the party could not proceed on the basis that the matter was restored to the Lower Authorities for fresh decision. We are, therefore, not satisfied that there is any merit in the ground urged by the Appellants for getting over the bar of limitation. The appeals are liable to be

dismissed as time barred.

The ratio laid down by the Apex Court in Ram Bhawan Singh s case (supra), is absolutely applicable in the present case as I have already indicated in the earlier paragraph that there is no affidavit either of the Appellant or his Counsel to the effect that the civil revision against the order of sale dated 13-8-1999 was preferred in the High Court under a wrong legal advice. There is nothing on record by way of any explanation from the Appellant that the Appellant has acted under the legal advice to prefer the revision. In the present case, even no application u/s 14 of the Limitation Act was filed by the Appellant along with the application under Order 21 Rule 90 before the Executing Court. In fact, there is no explanation which may be required to be considered by this Court with regard to sufficiency of cause being a good cause under due diligence which is the ingredient u/s 14 of the Limitation Act.

In view of the foregoing analysis of the factual scenario and the obtaining legal position, it is to be concluded that the Appellant is not entitled to the protection and benefit of Section 14 of the Limitation Act for extending the period of limitation.

Apart from the aforesaid, the submission of the Learned Counsel for the Appellant is that the Court below has committed serious illegalities while conducting the auction. Indisputedly, the confirmation of sale was stayed in the present case by order dated 5-7-1993 but there was no stay on the sale. It is also not, in dispute that earlier the highest bid of one bidder, namely, Ramgopal was accepted for a sum of 80.25 lac in the year 1993 but as the bidder was not found to be bonafide, the bid was cancelled. Thereafter, on 21-11-1997 one Shankar Lal offered the highest bid for a sum of Rs. 48.52 lac. The Court closed the bid in favour of Shankar Lal on 28-1-1998, however, this time also the bidder failed to deposit the complete bid amount. There was also an objection on behalf of the Appellant, therefore, the said bid was also cancelled. In this regard the Court below has come to a conclusion that looking to the acts of the earlier bidders in not turning up to fulfill the sale by tendering the complete bid amount a suspicion had arisen as to their genuineness and bonafide. Such highest offers did not appear like fulfilling the sale and the bid appeared to be planted as they were never materialized. Thereafter, again valid and wide publication for auction of the property in dispute was made. Ultimately, on 13-8-1999 the present auction purchaser came with a bid of Rs. 16,69,000/- and the Court below under the circumstances and finding no possibility of other bid of higher amount coming forward, the bid was closed in favour of the auction purchaser, the second Respondent herein. It was always open to the Appellant to bring some higher bidder for the property in question. The Appellant was never stopped from selling the property on his own and then to get the sale proceeds adjusted after repayment of the same. It is not in dispute that the property in question as on 13-8-1999 was the same as it was in the earlier auction conducted in the year 1993. Admittedly, there was lack of appropriate safety measures on the land in

question because of which the condition of the property had deteriorated. By efflux of time even the property was done away with the plant & machinery and the valuable assets. Therefore, by no stretch of imagination it can be said that the said property would have fetched the same price as it could have at the time when the property was intact. It has already been found that the earlier bids were planted. Therefore, it is difficult to say that the price fetched by the property at the time of sale on 13-8-1999 was not the adequate price.

In my opinion, the objection with regard to the valid publication of auction notices in the newspapers has no merit of its own. The publication of auction notices was made in the State level newspapers and this was done as per the Court's order dated 26-8-1993 when it was found that no outsider bidder had turned up on earlier occasions in the auctions. There is nothing on record that any objection was made on behalf of the Appellant to the order dated 26-8-1993 that the publication of auction notices in the State level newspapers was unjustified as it would reduce the chance of there being bidders with higher amount in the proceedings. The expenses incurred by the decree-holder to the tune of Rs. 1,28,000/- do not indicate that publication with regard to sale of the property was made with misery. It is seen that even after 7-8-1999 when the highest bid of Rs. 16,69,000/- from the Respondent No. 2 had been there, again the call was made on 9th and 10th August, 1999 in the wake of higher amount than Rs. 16,69,000/- and ultimately when no higher bid was coming forward the bid was closed in favour of the auction purchaser on 13-8-1999. It is not the case of the Appellant here that there was anybody to offer higher bid than Rs. 16,69,000/- and he was denied. The auction purchaser has deposited the entire bid amount. For about four years from 13-8-1999 the amount was deposited with the Court and the Court has given a finding that even during that period also no effort or submission was made on behalf of the Appellant that still there was someone to offer higher amount than Rs. 16,69,000/-. In these circumstances, no illegality in the auction is made out and the submission of the Counsel in this regard has no force.

Submission of the Learned Counsel for the Appellant is that no adequate price was received. In this context, after close scrutiny of the factual matrix of the case and the legal aspects related thereto as I have already held that there was no illegality committed in holding the auction sale, therefore, mere inadequacy of the price received in the auction sale is no ground to set aside the same. The view as such finds support from the decision rendered by the Apex Court in *Rajender Singh Vs. Ramdhar Singh and Others*,

In view of the aforesaid analysis of facts and the reasons stated hereinabove, I do not find any substance in the appeal. The appeal being bereft of merits, it is dismissed accordingly. No order as to costs.