

(1926) 03 AHC CK 0066
In the Allahabad High Court

Baldeo

APPELLANT

Vs

Nabi Ahmed Khan and Another

RESPONDENT

Date of Decision : 10-03-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1926 All 754

Hon'ble Judges : Daniels, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Daniels, J.—This is an application in revision u/s 115 of the Civil P.C., on the ground that the learned District Judge has failed to exercise a jurisdiction vested in him by law. The case is one of an application to set aside a sale under Order 21, Rule 89, Civil P.C. The Munsif dismissed it on the ground that the deposit was not made within thirty days. The learned District Judge has dismissed it on the ground that there was an application under Order 21, Rule 90, pending which under Sub-clause (2) of Rule 89 barred the present application. The application alleged to be under Order 21, Rule 90, was filed on the 3rd July 1925 on which date the sale had not been concluded. The sale was held on 21st July, but the sale officer refused to accept the highest bid and conclude the sale, holding that the highest bid offered was insufficient. He, therefore, submitted the papers to the civil Court for orders without concluding the sale. It was while this reference was pending that the judgment-debtor's application was made. The Court gave the judgment-debtor time till 8th of August to produce bidders willing to offer a higher sum. As the judgment-debtor failed to do this the Court then concluded the sale on 8th August accepting the highest bid previously offered and fixed 22nd August for confirmation of sale. The application of 23rd July is, no doubt, an application of the same nature as an application under Rule 90, but it is a condition precedent to an application under Rule 90, that the sale must have been concluded. It appears to me, therefore, that the learned District Judge was wrong in holding that the application was barred by Rule 89(2). I accordingly

allow this revision and setting aside the orders of the Courts below, direct the learned Munsif to restore the application under Rule 89 to his file and to dispose of it in accordance with law. The applicant will get his costs of this Court and of the lower appellate Court. Other costs will abide the result.