
(1932) 08 PAT CK 0007
In the Patna High Court

Bijoy Singh

APPELLANT

Vs

Raja Kirtyanand Singh and Others

RESPONDENT

Date of Decision : 04-08-1932

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 86, 115

Citation : AIR 1932 Patna 342

Hon'ble Judges : James, J

Bench : Division Bench

Judgement

James, J.—The petitioner purchased certain property at a Court sale on 8th May 1931. He duly deposited the earnest money, and under Rule 85, Order 21 the balance had to be paid into Court before the close of the 15th day. At 10-30 a.m. on the 15th day the petitioner came with the balance of the purchase money which he tendered with the challans to the chief ministerial officer of the Court. The challans were made over to the Judge in charge for signature but the petitioner did not get them back on that day and without them the money could not be paid into the treasury. The challans were not returned until the next open day, when the petitioner duly deposited the balance of the purchase money in the treasury. When the time came for confirming the sale the Munsif of his own motion decided that as the whole of the purchase money had not been deposited in time, the sale must be set aside under Order 21, Rule 86, Civil P. C.

2. Mr. J. C. Sinha for the petitioner argues that he had done all that he could do in order to make his deposit in time; and the fact that delay on the part of the Court rendered it impossible for him to make a deposit within the period allowed ought not to make him liable to the penalty prescribed by Order 21, Rule 86.

3. He relies upon a decision of the Calcutta High Court in *Gujadhur Pauree v. Naik Pauree* [1882] 8 Cal. 528, wherein it was held that where a decree directed the payment of money into Court within a limited time, it would be sufficient compliance with the decree if the judgment-debtor brought the money into Court within that time and diligently took the necessary steps required by the

Departmental rules for its actual payment into the treasury.

4. This decision was followed in *Srinivasa Bhatta v. Malayacha Mannadi* [1883] 7 Mad. 211 in a case in which the balance of purchase money for a Court sale could not be paid into Court on the 15th day, though the challans had been obtained in time. It is suggested on behalf of the judgment-debtor that the rule laid down in Order 21, Rule 86 is imperative; and that even if the learned Munsif erred in his application of it, there was no want of jurisdiction such as would justify interference u/s 115, Civil P.C. But the petitioner in this case has been able to make out that the Munsif acted in the exercise of his jurisdiction illegally and with material irregularity; and the order to which objection is taken must be set aside. The auction-purchaser sufficiently complied with Rule 85, Order 21, Civil P.C., when he came to the Court at the opening hour of the 15th day with the money prepared to make his deposit and diligently took the steps required by the Departmental Rules; he cannot be held responsible for the obstruction which was caused by the delay in passing the challans.

5. The application is accordingly allowed. The petitioner is entitled to his costs from the contesting judgment-debtors: hearing fee two gold mohurs,