(1990) 06 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 849 of 1988

Central Bank of India APPELLANT

Vs

Raghbir Singh Virk and Others RESPONDENT

Date of Decision : 08-06-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 90, Order 21 Rule 93

Citation : (1992) 75 CompCas 685 : (1990) 98 PLR 457

Hon'ble Judges : J.V. Gupta, Acting C.J.

Bench : Single Bench

Advocate : S.M.L. Arora, for the Appellant;

Final Decision : Allowed

Judgement

J.V. Gupta, Actg. C.J.—This revision petition is directed against the order of the executing court dated January 16, 1988, whereby the auction-purchaser has been allowed interest at the rate of 12 per cent. per annum on the money deposited by him from the date of deposit till the refund of the purchase money.

2. In execution of the decree filed by the petitioner-bank, the attached property was sold in open auction for a sum of Rs. 60,500. The auction purchaser deposited the said amount in court on December 17, 1985. Subsequent thereto, the sale was ordered to be set aside on the basis of an irregularity committed in conducting the sale for want of notice under Order 21, Rule 66, CPC (hereinafter called "the Code"). At the same time, the auction-purchaser was also directed to withdraw the amount, vide order dated July 23, 1987. At the time when the sale was set aside under Order 21, Rule 90 of the Code, no direction as to interest was given by the executing court. Later on, the auction-purchaser moved an application stating that he may be allowed interest on the said amount from December 17, 1985, till its realisation from the decree-holder-bank. The said application was contested on the ground that the same was not maintainable and that the bank was not liable to pay the interest as the amount remained

deposited in court and was never paid to the decree-holder. The executing court took the view that since the sale was set aside because of the non-issuance of the notice under Order 21, Rule 66 of the Code, the decree-holder was at fault for the irregularity committed in conducting the sale without notice and, therefore, it was liable to pay interest at the rate of 12 per cent. per annum. Reliance in this behalf was placed on Arokiasamy and Another Vs. Martial Margaret, .

3. Learned counsel for the decree-holder-petitioner submitted that since the sale was set aside under Order 21, Rule 90 of the Code, there was no'' provision for payment of any interest in such, an eventuality. The payment of interest, if any, is contemplated under Order 21, Rule 93 of the Code, which reads as under :--

"Where a sale of immovable property is set aside under Rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid."

4. In any case, argued learned counsel, even if it be assumed that the sale was set aside under Order 21, Rule 92, since the auction-money deposited was never paid to the decree-holder, no interest could be allowed on the said amount.

5. After hearing learned counsel, I find merit in this revision petition.

6. The application for setting aside the sale was filed under Order 21, Rule 90 of the Code, on the ground of material irregularity in conducting the sale. When the sale was set aside, vide order dated July 23, 1987, the court never allowed any interest. The auction-purchaser was directed to withdraw the amount deposited. It was subsequent thereto that an application was filed for claiming interest presumably purporting to be under Order 21, Rule 93 of the Code. The executing court took the view that since the sale was set aside for want of notice under Order 21, Rule 66 of the Code because of the fault of the decree-holder, it was liable to pay interest. This view taken by the executing court is wrong and illegal. Firstly, the sale was not set aside under Order 21, Rule 92. It was under Order 21, Rule 90 of the Code where there is no provision for allowing any interest on the amount deposited by the auction-purchaser. Secondly, in any case, even under Order 21, Rule 93 of the Code, interest could be allowed only against a person to whom the amount was paid. Admittedly, in the present case, the amount of auction-money deposited by the auction-purchaser was never paid to the decree-holder. It remained lying with the court. Thus, neither under Order 21, Rule 90, nor under Order 21, Rule 93, any interest was payable to the auction-purchaser. Reference in this behalf may be made to Rao Bahadur Mothey Gangaraju Zamindar Garu of Ellore Vs. Sree Raja Bommadevara Venkatrayulu Naidu Bahadur Zamindar Garu of Pangidigudem, .

7. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside and the application filed by the auction-purchaser stands dismissed.

