

(1938) 03 CAL CK 0013
In the Calcutta High Court

Gopal Chandra Chanda

APPELLANT

Vs

Gobardhan Chandra Chanda and Others

RESPONDENT

Date of Decision : 17-03-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : AIR 1938 Cal 523

Hon'ble Judges : Derbyshire, C.J.;B.K. Mukherjea, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—This appeal, in my opinion, fails. The debtor whose property has been sold has paid into Court in accordance with Order 21, Rule 89(1)(a) and (b), Civil P.C. the sum equal to five per cent. of the purchase money and also the amounts specified in the proclamation of sale for the recovery of which the sale was ordered, but he did not pay in the poundage fee. A poundage fee is a charge made by the Court under the Court-fees Act for the sale of property. The learned Judge has set aside the sale. The auction-purchaser appealed against that order because the poundage fee was not paid into Court as well as the other sums. There is nothing in Order 21, Rule 89 which makes it necessary for the judgment-debtor to pay in the poundage fee as a condition precedent to the sale being set aside. Order 21, Rule 92 provides that where an application is made to set aside a sale under Order 89 and the deposit required by that Rule is made within 30 days from the date of sale, the Court shall make an order setting aside the sale. In my opinion, the learned Judge was right in setting aside the sale. There is no hardship or injustice upon the auction purchaser because Order 21, Rule 89 (3) provides:

Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

2. In the Civil Rules and Orders which are made by this Court applicable to District Courts it is provided in Ch. X, Rule 246:

1. When a sale of immovable property is set aside under Order 21, Rule 89 or Section 174 (1), Ben. Ten. Act, the Court may make an order for payment of the judgment-debtor or by the person at whose instance the sale is set aside, of the poundage fee and other costs, if any, not covered by the proclamation of sale.

3. This order can be made by the Judge who set aside the sale and in that way the judgment-debtor can be made to reimburse the auction purchaser for any costs and the poundage fee he has properly paid in) connexion with the sale. For these reasons this appeal must be dismissed with costs, hearing fee being assessed at two gold mohurs.

B.K. Mukherjea, J.

4. I agree.