

(1942) 01 BOM CK 0007

In the Bombay High Court

Case No : Civil Revision Application No. 90 of 1942

Gordhandas Ranchhoddas

APPELLANT

Vs

Ishvarbhai Chhanalal

RESPONDENT

Date of Decision : 07-01-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 65

Citation : AIR 1942 Bom 306 : (1942) 44 BOMLR 638

Hon'ble Judges : Wassoodew, J

Bench : Single Bench

Judgement

Wassoodew, J.—This is a second appeal from a decision of the learned Assistant Judge of Ahmedabad. The facts giving rise to this appeal, so far as a statement thereof is necessary for the present purpose, may be shortly stated. In execution of a money decree a house site with a partially completed building standing thereon was sold by the Court on August 11 1936. The highest bid of Rs. 4,525 was offered by the appellant Gordhandas. The sale was subject to a charge on the property in the sum of Rs. 2,500. That highest bid was accepted by the Court and the auction purchaser made the deposit of the entire sum forthwith. The confirmation of the sale was delayed owing to certain applications by another holder of a decree against the judgment-debtor and also by the latter to set aside the sale. While the proceedings under those applications were pending in or about June, 1937, owing to a violent storm and heavy rainfall the stability of the half completed building was endangered and the municipality insisted upon its being pulled down and actually ordered the removal of the entire structure. On that account the two floors and a partially constructed balcony at the top were demolished and the material was placed on the ground. In consequence on July 27, 1937, the auction purchaser Gordhandas applied to the Court for refund of the purchase money deposited by him in Court, and he maintained that the sale should be set aside inasmuch as the delivery of the property to him at the auction sale had become impossible by reason of the destruction of the building which he contemplated to buy at the auction by offering the highest bid. The

learned Judge of the executing Court thought that although this was a case of hardship, the appellant had purchased that building in that incomplete state with his eyes open, and that the inherent powers of the Court could not be exercised in favour of the auction purchaser. The learned Assistant Judge, to whose Court an appeal was taken, held that the appeal was incompetent. But at the same time he observed that the allegation of hardship was not justified upon the facts; for, the charge subject to which the property was sold had been paid off and was not known to the parties at the time of sale and that therefore the auction purchaser had really gained an advantage. He therefore confirmed the order appealed from. Against that order the auction purchaser has filed this second appeal.

2. Mr. Shah, counsel for the respondents, has raised a preliminary objection to the maintainability of the appeal. He says that an order refusing to exercise jurisdiction u/s 151 of the CPC is not an appealable order. The order u/s 151 of the CPC is clearly not appealable, but according to the prevailing practice if the merits and the circumstances of the case justify, this Court would permit the appeal to be converted into a revision application and treat it as such. This the learned advocate for the appellant has asked me to do, and accordingly I have upon the merits decided to hear this appeal as a civil revisional application.

3. The facts are not in controversy. The question involved is whether the Court has jurisdiction to grant the relief prayed for by the auction purchaser by virtue of the provisions of O. XXI, Rule 89 to 91, or Section 151 of the Civil Procedure Code. The procedure in regard to the deposit by an auction purchaser is laid down in O. XXI, Rule 84, of the Code. The execution sale becomes complete if the bidder makes the deposit upon the declaration that his bid has been accepted. The sale is however not made absolute until a period of thirty days thereafter, for, during that period the sale is liable to be set aside at the instance of the judgment-debtor on the ground of irregularity in publishing or conducting the sale or upon deposit by him in Court of the amount specified in the sale proclamation together with compensation to the purchaser under O. XXI, Rule 89 and 90. Where no such applications are made or where such applications are made and withdrawn or disallowed? in this case they were withdrawn?the conditions of O. XXI, Rule 92, will come into operation. That rule says as follows:?

Where no application is made under Rule 89, rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute. ...

4. Then follows the procedure for granting a certificate to the purchaser under Rule 94. It is important to note that such a certificate bears as date the day on which the sale became absolute. Section 65 of the CPC reads thus:?

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale

becomes absolute.

5. Having regard to the express provisions of Rule 92 of O. XXI making it obligatory on the Court to confirm the sale under certain circumstances stated, it can safely be said that the Court's jurisdiction to set it aside on any other ground not specified is, in my opinion, impliedly excluded. In *Sridat v. Mohar Singh* [1932] A.L.J.R. 392 the auction purchaser asked the Court to set aside a sale on the ground that there was an honest mistake that the amount for which the property was knocked down included the mortgage money also, although he was not misled by anything done or said by the sale officer. Sulaiman J., as he then was, observed that the express provisions contained in Rule 92 precluded the Court from setting aside a sale on any ground other than that prescribed in the rule. It is well recognized that where the jurisdiction of a Court is expressly limited to the decision of particular questions, the decision of other questions must be regarded as impliedly removed from its jurisdiction. The Court in such a case cannot invoke its inherent powers to rectify what is in its opinion a supposed wrong [see *Jethabhai Narsey v. Chapsey Cooverji* (1909) ILR 34 Bom. 467, s.c. 11 Bom. L. R. 1014; *Gopal Dinkar v. Ganesh Narayn* (1920) ILR 45 Bom. 512 : S.C. 22 Bom. L.R. 1416. and *Motibhai v. Ranchhodbhai*. 4 (1934) 37 Bom. L.R. 241.] Here the Legislature has dealt with specifically the jurisdiction of the Court to interfere both on behalf of the judgment-debtor and on behalf of the auction purchaser in certain limited circumstances. The purchaser in an auction sale under Rule 91 has a right to apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold. And even that right of the auction purchaser under O. XXI, Rule 91, is limited to the case where the judgment-debtor has absolutely no saleable interest in the property. Where that interest is different from the one described in the proclamation or very much more limited, no relief can be granted to him unless it is possible to say that there is nothing left to be sold [see *Sonaram Dass v. Mohiram Dass* (1900) ILR 28 Cal. 235. *Shanto Chandar Mukerji V. Nain Sukh* (1901) ILR 23 All. 355 and *Muhammad Rahanmat-ul-lah v. Bachcho* (1905) ILR 27 All. 537] There is no other ground specified in Rule 91, and the Court's jurisdiction is therefore necessarily restricted, and, in my opinion, it could not be enlarged unless the requirements of justice demand it.

6. The question then arises as to whether upon sound judicial principles the auction purchaser has a right to successfully complain that the thing or the substantial thing for which he offered this bid cannot be handed over to him. Mr. Shah for the appellant has put his argument as follows: "If the Court has offered him a particular thing, can it say, if that particular thing changes its identity or is destroyed, that something entirely different should be taken over in fulfillment of that promise?" The learned advocate has urged that the Court will not perpetrate injustice and, apart from the provisions of O. XXI, Rule 89, 90 and) 91, the Court should interfere u/s 151 of the Code. On the facts the position is not quite fairly stated as the learned Assistant Judge has pointed out, and in my view the jurisdiction is limited and no good grounds have been made out to

interfere.

7. I was referred by the learned advocate to *Raghava Chariar v. Murugesu Mudali* (1923) ILR 46 Mad. 583 in support of his view. But there the learned Judges interfered in the exercise of their inherent powers because the Court was misled. The sale was also vitiated at the inception. It was said that if the Court was satisfied that it had been misled either in giving leave to bid to the decree-holder or in fixing the reserve price, the Court had an inherent power to refuse to confirm an auction sale held under its order. That is the principal distinction between that case and this. The sale was good when the purchaser was declared to be the highest bidder. There were the acts of God and the municipality which supervened prior to the confirmation of sale. The question therefore is whether on that account the Court could set aside the sale which was initially good. In my opinion, the case of *Raghava Chariar v. Murugesu Mudali* does not afford good analogy.

8. There is on the other hand the authority of *Nizamuddin v. Jumma* [1926] AIR Nag. 17 against the contention of the auction purchaser. In that case the learned Judge held against the auction purchaser's contentions under similar circumstances for two good grounds: (1) that there is no analogy between a voluntary sale and a Court sale in execution, and (2) that there is no mutuality of remedies. With that view I respectfully agree. There is no obligation; on the judgment-debtor to protect the property between the period of the sale held by the Court and its confirmation, and in the absence of such obligation or any other special terms the risk must follow the property. On that account there is no reason why the principle of Section 86 of the Indian Contract Act, which is now incorporated in Section 20 of the Sale of Goods Act, cannot in a Court sale of Immovable property afford a basis for the rejection of the auction purchaser's contention. With regard to mutuality of remedies one can draw upon the analogy of accretions to property subsequent to the declaration of the highest bid and before confirmation of the sale. The benefit goes to the bidder and not to the judgment-debtor. In *Bhawani Kumar v. Mathura Prasad Singh* (1912) L.R. 39 I.A. 228, s.c. 14 Bom. L.R. 1046 their Lordships of the Privy Council observed that if there had been any accretions to the property between the date of the auction sale and the date of the confirmation, those accretions would become the property of the purchaser. In consequence, if there is deterioration or loss, that must be borne by the purchaser. In my view, therefore, the decisions of the Courts below are correct. Accordingly the rule in this civil revisional application is discharged with costs of respondents Nos. 1 and 2 who alone have appeared.