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**(1991) 12 RAJ CK 0007**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 142 of 1991

Ladulal APPELLANT

Vs

State Bank of Bikaner and Others RESPONDENT

**Date of Decision :** 05-12-1991

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

**Citation :** (1991) WLN 442

**Hon'ble Judges :** N.K. Jain, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

N.K. Jain, J.—This appeal is directed against the order of learned Addl. Dist. Judge, Chittorgarh dt. 12.4.91 Whereby he has refused to set aside sale under Order 21 Rule 90 in execution case No. 10/86, and confirmed under Order 21R. 92. State Bank of Bikaner and Jaipur respondent No. 1 Sentioned a loan for Rs. 1 lac for machinary and 50 thousand for construction of building to the appellant and respondent No. 3 but he could not repay the amount. A suit was filed and it was decreed for Rs. 1,81,011/-. The respondent No. 1 Bank decree-holder filed an exedution petition. The appellant filed objections...rejected. Hence, this miscellaneous appeal.

2. Mr. N.K. Rastogi, learned Counsel for the appellant has submitted that sale was conducted on 20.3.90 without giving proper and full particulars in the preclamation of sale and thus mandatory provisions were not complied with. He has further submitted that no opportunity was given to the appellant to produce evidence regarding valuation of property. He has placed reliance on Gajadhar Prasad and Others Vs. Babu Bhakta Ratan and Others, and Shalimar Cinema Vs. Bhasin Film Corporation and Another,

On the other hand Mr. D.S. Shishodia and Mr. Suresh Shrimalee, learned Counsel for the respondent has submitted that the petitioner is raising objection only to delay the execution. The petitioner has not produced any evidence despite sufficient opportunities were granted to him and on the basis of alleged minor irregularity, if any, the sale cannot be called void. He has placed reliance on Mohanlal v. Firm Devichand Nathulal Jewariya R.L.W.1987 260 , Kayjay Industries (P) Ltd. Vs. Asnew Drums (P) Ltd. and Others, , Kalu Ram Vs. Shambhoo Singh and Another, Dhinendranath Shalchandranath Saha and Ors. v. Sudhirchandra Ghosh AIR 1984 S.C. 1300 and Chuttan Lal Vs. Md. Ikram Khan

3. I have heard learned Counsel for the parties and perused the impugned order as well as case law.

4. In Mohanlal v. Firm Devicnend Nathulal Jewariya 1987 R.L.W. 260 Notice has been given to the judgment debtor before drawing up by proclamation of sale by the executing court and notice was duly served on him. The judgment debtor did not raise any objections at that time that the estimated market value put by the decree-holder in his proposed proclamation of the intended sale was under value or under estimated. Having not raised the objection at that time, the judgment debtor was precluded from raising such objection after the property had been put to auction and the sale had been knocked down in favour of the decree-holder who had obtained permission to bid.

5. In Kayjay Industries (P) Ltd. v. Psnew Drugs (P) Ltd. it has been observed that more inadequacy of price cannot demoslish every court sale. Here, the court tried its best, time after time to raise the price. It has also been observed that the sale proceedings had been pending too long and the first respondent could not even when given the opportunity, produce byeirs by private negotiation. No value report was produced by him. It has been held that we are satisfied that the District Judge has committed no material irregularity in the conduct of the sale in accepting the highest offers of appellant on September 3, 1969.

6. In Kalu Ram Vs. Shambhoo Singh and Another, no objection to under valuation in sale proclamation even though notice under O. 21 Rule 66 was served personally on judgment debtor, sale at inadequate price. It has been held that the judgment debtor is estopped from raising objection that inacequacy of price was due to under valuation in sale proclamation.

7. In Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others, it has been observed that non-complaince with Section 35 does not sale anullity. Judgment-debtor although receiving notice or proclamation not attending up of proclamation and also not taking objection to non-observance of the Section, sale is not liable to be set aside.

8. In Chuttanlal v. Md. Ikram Khan AIR 1933 Allahabad 546 it has been observed that under Order 21 Rule 90 judgment-debtor failing to object to under valuation of property even where notices under Rule 66, he is estopped from urging under valuation as ground for material irregularity.

9. When property is sold in public auction in execution of the decree as per

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provision of Order 21 Rule 66, the court shall cause a proclamation of the intended sale to be in the language after notice to all parties. The proclamation to be drawn after notice and it shall state time and place fairly and accurately so that persons can know the nature and value of the property. The purpose is go give maximum benefit to the judgment debtor by fetching a good price. If estimate is given by judgment debtor, the court may enter and give its own estimate. Under Order 21 Rule 54, the judgment debtor is required to attend the court on specific date to be fixed for settling the proclamation. The order of proclamation is to be fixed at conspicuous places adjacent to the property and also by beat of drums and other customary mode. Under Order 21 Rule 90, the sale can be set aside on the ground of material irregularity of fraud in publishing or conducting the sale, but no sale can be set aside unless the court is satisfied that the applicant has sustained substantial injury by such irregularity or Fraud and money can be refunded to the auction purchaser and at the same time if the applicant could not have taken objection on or before proclamation of sale so drawn, no such application can be entertained.

10. In the instant case, the decree is dated 25.1.86 and on earlier occasion on 20.4.89 on the objections, the sale of oil mill was set aside on 16.9.89 and the money was refended and the case was remanded back with a direction to give an opportunity to judgment debtor petitioner to furnish relevant main documents along with the valuation report, so that the same may be appended with the proclamation but despite that he has not taken such steps and this time respondent No. 2 Bhanwarlal has given higher bid and has deposited Rs. 2,07,000/- with the bank and now the petitioner wants to get sale declared void by raising some objections which were raised on earlier occasion. As per decision of Supreme Court in Bhinendranath Shalehandrandth Saha v. Sudhirchandra Ghosh (supra), the sale is according to law and the petitioner cannot be allowed to raire objection with a view to delay the proceedings for the one reason or the other. The Court has also observed that he has not filed any affidavit of independent person nor he was prepared to take the property himself. He has not been able to satisfy the court that how he has prejudiced by the sale on the basis of under valuation nor he has availed the opportunity inspite of remand. It is true that legal point which goes to the route of the case can be raised at any stage provided it does not rentire investigation of fact and as discussed above sufficient opportunity was given to the petitioner but he could not avail the same, thus the decree-holder cannot be deprived of decrestal amount as per decree passed in his favour in the year 1986. In view of this case-law cited by the learned Counsel for the appellant is not helpful to the appellant. Under these circumstances, the impugned order does not call for any interference.

11. In the result, this appeal has no force, and it is hereby dismissed.

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