
(1927) 07 AHC CK 0013
In the Allahabad High Court

Mirza Altaf Beg

APPELLANT

Vs

Fazlul Haq and Another

RESPONDENT

Date of Decision : 25-07-1927

Acts Referred:

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

Citation : AIR 1928 All 196

Hon'ble Judges : Dalal, J

Bench : Division Bench

Judgement

Dalal, J.—No second appeal lies, so this appeal is argued as a revision. The view of law taken by the lower appellate Court is correct. The facts are that after a sale, and within 30 days, the judgment-debtor applied under Rule 90, Order 21, to have the sale set aside on the ground of irregularity and fraud. That application was dismissed, whereupon within limitation he moved under Rule 89 for the cancellation of the sale on depositing in Court the full amount of the decree and 5 per cent. of the purchase-money. The argument here was that as soon as the application under Rule 90 was dismissed, the sale was automatically confirmed under Rule 92 (1), because on such dismissal the Court is enjoined to make an order confirming the sale, and it is directed that thereupon the sale shall become absolute. This, however, is obviously subject to the rule that a sale shall not be confirmed until after 30 days. In the second clause of Rule 92 it is laid down that, when in an application u/s 89 the deposit required by that rule is made within 30 days of the date of sale, the Court shall make an order setting aside the sale. This clause modifies Clause (1), and I hold that under Clause (1) a sale cannot be made absolute in less than 30 days and deprive a judgment-debtor of the benefit of the provisions of Rule 89. In Rule 89 itself there is Clause (2) that the judgment-debtor, if he likes, may withdraw an application u/s 90 (1), and deposit money. I do not think any difference can be made between a withdrawal and a dismissal by a Court. The provisions of this clause are clearly intended to give to the judgment-debtor the privilege of the provisions of Rule 89 (1) in case he failed to enforce the provisions of Rule 90. It is nowhere stated

that, if an application under Rule 90 is dismissed, there cannot be an application under Rule 89, provided it is made within limitation. I dismiss this application.