

(2012) 08 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition NO. 1055 OF 2003

Smt. Kamla Devi and Another

APPELLANT

Vs

Bank of Baroda and Another

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 86
Constitution of India, 1950 — Article 227

Citation : (2012) 08 MP CK 0051

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Justices S.K. Seth

1. Petitioners are husband and wife. They have filed this petition under Article 227 of the Constitution to assail the sale of their agriculture holdings in Court Auction Sale conducted by the 17th Additional District Judge, Indore in Execution Case No. 40A/86. Facts in brief giving rise to this petition are as under. Respondent Bank filed a suit in 1981 to recover outstanding amount of loan together with interest. The suit was filed against principal borrowers (petitioners) and guarantor. Petitioners suffered an ex-parte decree in that suit in the year 1988.

2. That the decree-holder Bank put the decree in execution and ultimately after a decade or so, the agriculture holdings of petitioners were put to public auction in a Court Sale in 2002 and the Court directed the highest bidder i.e. respondent No. 2 to deposit requisite amount. The requisite amount in cash was deposited in the CCD on 4.4.2003 therefore the sale was knocked down and confirmed in favour of respondent No. 2. Pursuant to this a registered Sale deed was executed in favour of respondent No. 2. After completing above formalities, auction purchaser applied for warrant of possession and at that stage present petition was filed.

3. Heard the learned counsel at length. Also perused the record of the Court below.

4. Shri Sethi, submitted that the learned executing court acted contrary to law in confirming the auction sale in favour of respondent No. 2. He submitted that entire auction proceedings are vitiated because of violation of mandatory provisions of order XXI Rule 85/86 of the C.P.C. He also contended that there was no need to put the holdings to auction. Making a passing reference to various decisions, it is contended that impugned proceedings be quashed. After hearing arguments, we find that this is a glaring case where provisions were unscrupulously pressed into service to avoid and/or delay the recovery amount as long as possible. We have already pointed that the Bank filed the suit in the year 1981. Petitioners remained absent in the suit. An *ex parte* judgment and decree was passed in the year 1988. Now the real litigation has started, because to get the decree executed is a Herculean task. Judgment debtor leaves no stone unturned to avoid and, if that is not possible then, to delay as long as possible execution of decree by taking recourse to pure technical rules realising little that the rules are hand-made tools of justice and are framed to complement the provisions and not to displace or obstruct them. Rules are meant to advance the course of justice and not to thwart it. The edifice of the entire judicial system is based on the concept that the Courts will ensure that the game is fair and played by the rules. No one can be allowed to take advantage of a foul. As pointed out above, petitioners did nothing to repay the loan or to satisfy the decree passed against them. Instead, obstacles were put almost on every step to delay execution proceedings. Now after the sale was effected, petitioners came forward that the warrant of possession be not issued against them. This can not be countenanced. This is gross misuse of procedural law where the justice is sought to be broken on the wheels of technicalities. We find no merit and substance in this petition therefore, petition fails and is hereby dismissed with costs throughout.