
(1994) 12 SC CK 0061

In the Supreme Court Of India

Case No : Civil Appeal No's. 1789-90 of 1988

State Bank of India

APPELLANT

Vs

Ajit Jain and Others

RESPONDENT

Date of Decision : 01-12-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90
Constitution of India, 1950 — Article 142

Citation : (1995) 1 BC 446 : (1995) 82 CompCas 358 : (1995) 1 JT 60 : (1994) 5 SCALE 65 : (1995) 1 SCC 683 Supp : (1995) 1 UJ 147

Hon'ble Judges : R. M. Sahai, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

R.M. Sahai J.

1. These appeal are by the decree-holder. The appellant a statutory bank, filed a suit for recovery of Rs. 5,22,585.37 with cost and future interest against respondent No. 2 sometime in 1975. The suit was decreed with costs and future interest at 6% per annum on 7th April 1976. On 12th August 1976 the appellant filed an execution application for sale of suit property of the respondent No. 2. On this application the Executing Court issued the warrants of attachment on 25th August 1976. The property was auctioned on 15th June 1979 for a sum of Rs. 1,90,000/-. The appellant filed an objection against the sale and claimed that the reserved price of the property being Rs. 6,00,000/- the sale was vitiated as the property was sold in violation of not only the reserved price fixed by the appellant but was contrary to the procedure required to be followed. Objection was filed by the judgment debtor too. The property was purchased by Shri Ajit Jain and four others. The objections were contested by the auction purchasers. The Executing Court dismissed both the objections filed by the appellant and the judgment debtor. The appellant, however, filed an appeal against dismissal of the objection and confirmation of the sale in favour of the auction purchaser. The

order was set aside by the High Court as the objections had been dismissed without affording any opportunity to the objectors to lead evidence. In pursuance of the order passed by the High Court the Trial Court framed issues both in the objection filed by the judgment-debtor and the appellant and permitted the parties to lead evidence as well. The Trial Court dismissed both the objections and directed a sale certificate under Order XXI Rule 90 of the CPC, to be issued in respect of the property in dispute in favour of auction purchasers. This order was challenged in first appeal before the High Court. Four of the auction purchasers stated before the Court that the auction sale may be set aside. The learned Single Judge was of the opinion that since four of the auction purchasers state, 'that the sale in the present case is void being in violation of mandatory provisions of law, hence the present application is maintainable and the sale was liable to be set aside without entering into another controversy'. This order was set aside by the Division Bench.

2. The bank has now filed an appeal in this Court. We have heard the learned Counsel for parties at length. When this appeal came up for hearing on 11th May 1994 we were of opinion that due to protracted litigation a decree obtained by the appellant as far back as 1976 has not been executed. Further Shri Ajit Jain who is the auction purchaser, has entered into possession and is continuing as such since past many years. In view of this we had passed following order:

In execution of decree for Rs. 5,22,585.37, Plot No. 360-61 in Industrial Area, Chandigarh along with building constructed thereon and machinery installed was sold on 15.6.79 for a consideration of Rs 1 lakh and 90 thousand. The bank decree holder filed an objection under Order 21 Rule 19 of the C.P.C. claiming various irregularities in auction proceedings. Objections were filed by judgment-debtor as well. Since then the litigation has been going on between the parties and this appeal has been filed by the decree holder against remand order passed by the Division Bench of the High Court directing the Single Judge to decide the dispute on merits as out of five auction purchasers one had not consented for setting aside the sale.

Having heard learned Counsel for parties and considering the long delay which has taken place we are of the opinion that it would be in the interest of justice and all the parties if the matter is amicably settled as four out of five auction purchasers have given in writing that the sale be set-aside. In our opinion, the decree holder and auction purchasers should be adequately compensated. But what should be the compensation to be agreed between the parties?

We, therefore, direct this appeal to come up for further orders in the 3rd week of July, 1994 in Chambers if the bench is not sitting. We hope that the parties in the meantime shall negotiate and workout the solution and report the compromise to this Court when the appeal is taken up on the next date.

This order was passed by us as we were of the opinion that if the sale were to be set aside it would work hardship against Shri Ajit Jain who is one of the auction

purchasers and is in exclusive possession of the property. Whereas if it is upheld then it would be extremely unjust to the appellant. As stated earlier the decree was for Rs. 5,22,585.37 in 1976. It has swelled to nearly Rs. 15,00,000/- and the bank would be getting only Rs. 1,90,000/-. That the property is valuable, cannot be disputed, as even according to auction purchaser the rent which accrued from the premises in dispute between 17.3.1979 to 19.9.1984 came to Rs. 7,35,000/-. This itself shows that the sale of the property for a sum of Rs. 1,90,000/- was inadequate. In this context it is necessary to mention that one of the pleas raised by the appellant and the judgment-debtor was that the auction purchaser prevented any bidder from entering the plea of auction. We consider it unnecessary to record any finding on it. But the inadequacies of the amount for which the property was sold coupled with the statement of four of the auction purchasers that the sale was vitiated gives credence to the plea raised on behalf of the appellant. No further need be said.

3. In the circumstances we dispose of these appeals under Article 142 of the Constitution of India to do substantial and complete justice between the parties. Shri Ajit Jain during course of arguments had agreed that he would not stick to the price of Rs. 1,90,000/- and was willing to pay substantial amount both to the bank and to the decree-holder so that the future litigation may be avoided provided his claim alone to the property was accepted. That in our opinion does not present any difficulty. Since four of the auction purchasers have voluntarily withdrawn from the auction they cannot have any right or claim over the property in dispute. In case they have contributed any amount towards payment of the auction amount they shall be entitled to claim refund from Shri Ajit Jain.

4. Shri Ajit Jain shall pay a sum of Rupees Fifteen Lakhs to the bank even though if the dues are taken as on today they are more than Rupees Fifteen Lakhs. This payment would be in full and final settlement of the dues outstanding against the judgment-debtor and it would result in discharging him of all the claims of the appellant-bank against him. Shri Ajit Jain shall further pay a sum of Rs. 5,00,000/- to the judgment-debtor. The amount of Rs. 3,00,000/- withdrawn by the judgment-debtor from the rent deposited shall not be adjusted towards this payment. Remaining amount in deposit shall be paid to the judgment-debtor. Shri Jain shall deposit balance amount, that is, Rupees Five Lakhs minus the amount which is lying in deposit towards rent and Rupees Fifteen Lakhs minus Rupees One Lakh Ninety Thousand, the auction amount as we are informed this amount is lying in deposit with the Court. All these amounts shall be deposited within three months from today. The bank and the judgment-debtor shall be entitled to withdraw the same.

5. In case of failure deposit the judgment and order of all the courts including auction sale held on 15th June 1979 shall stand set aside.

6. The appeals are disposed of accordingly. Parties shall bear their own costs.