

(1935) 05 CAL CK 0011
In the Calcutta High Court

Sylhet Co-Operative Town Bank Limited	APPELLANT
Vs	
Rasik Chandra Chowdhury	RESPONDENT

Date of Decision : 28-05-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72

Citation : 168 Ind. Cas. 258

Hon'ble Judges : R.C. Mitter, J;Henderson, J

Bench : Division Bench

Judgement

R.C. Mitter, J.—This appeal is on behalf of the decree-holder. His application for execution has been dismissed by both the Courts below. The decree-holder obtained a decree for money against the judgment-debtor respondent in the year 1933 and applied for execution. The execution case was numbered 166 of 1933 and was registered on March 23, 1933. The decree-holder applied for bringing the property to sale, and on August 17, 1933, asked for permission to bid. This permission was given on condition that his bid was up to the decretal 1933, the sale was held, the bid of the decree-holder was the highest but it was not up to the decretal amount. On the following day the Nazir made a report to the Court. The Court said that the decree-holder's bid could not be accepted as there was a condition that he was to bid up to the decretal amount, but the Court passed orders dismissing the execution case. The case was accordingly struck off on August 23, 1933.

2. There was a miscellaneous appeal by the decree-holder (No. 140 of 1934) against the last-mentioned order passed by the executing Court. Two points were raised before the Court of Appeal and those two points are also urged before us. The first point is that the executing Court had no power to attach a condition of the nature stated above when the decree-holder made the application for permission to bid at the Court sale. The second point is that in any event, in the circumstances, the executing Court was not justified in dismissing the execution case.

3. In support of the first proposition, the learned Advocate for the appellant has relied on the following decisions: Raghunath Rai Mahadeva Vs. Jatan Ram Sheo Narain, ., Badri Sahu and Others Vs. Pandit Peare Lal Misra and Others, and Mangat Rai v. Babu Ram 26 A.L.J. 1325 : 112 Ind. Cas. 620 : AIR 1929 A 11 85. With regard to the Allahabad case we are in this position that we do not know what was the rule then in force in the Allahabad High Court corresponding to Order XXI, Rule 72. If the rules were as to be found in Appendix V of Mulla's Civil Procedure Code, a decree-holder required no permission to bid. With regard to the Patna cases, the first one has simply followed the case reported in Badri Sahu and Others Vs. Pandit Peare Lal Misra and Others, . That was an ex parte decision and what were the facts of that case do not clearly appear in the report. It may be that an unconditional permission to bid was given to the decree-holder but afterwards at the time of the sale the Court insisted on the decree-holder to bid up to the figures stated in the sale proclamation. These cases of the Patna High Court, in our judgment, are not very helpful. Reading the statute as it is, we are of opinion that an executing Court can impose a condition to the permission given to the decree-holder to bid at a sale held under the Code of Civil Procedure. The decree-holder has no right to bid at the sale, and it is only if he gets permission from the Court that he can bid. A decree-holder who has got no permission to bid but does so, (?) the sale is liable to be set aside on a proper application. Under the provisions of Order XXI, Rule 72, he has, therefore, to make an application to the executing Court for permission to bid. The executing Court has power either to grant or to refuse the application. Inasmuch as it has power to refuse permission, it has power to impose any condition to the permission to bid at a Court sale. The power to impose a condition follows from the power to refuse permission. In the circumstances we hold that the executing Court has power to impose a condition to the permission to bid at a Court sale. Therefore there is no substance in the first contention. As regards the second contention, we are, however, of opinion that the order of the Court of first instance which has been affirmed by the lower Appellate Court, dismissing the execution case cannot be justified. The Court was right in refusing to accept the bid when the condition attached to the permission to bid was not fulfilled, but certainly it was not right in saying that inasmuch as the decree-holder had not carried out the terms of the condition the execution could not proceed further. When the bid was not accepted, the executing Court ought to have either put up the property then and there again for sale, or should have asked the decree-holder to take steps for the issue of a fresh sale proclamation.

4. We, therefore, hold that the order dismissing the execution case is a bad order and must be set aside. The proper order to make in the circumstances is to allow the decree-holder to proceed with the execution from the stage at which the Court refused to accept the decree-holder's bid.

5. The orders of the Courts below are, accordingly, modified. The Court of the first instance is directed to proceed with the execution case No. 166 of 1933 by issuing a fresh sale proclamation.

6. Is there is no appearance on behalf of the respondent we make no order as to costs.

Henderson, J.

7. I agree.