

expression cannot be given a different meaning in relation to the second alternative in the same clause. We are, therefore, of the opinion that the view adopted by the Appellate Assistant Commissioner and affirmed by the Tribunal is correct.

(6) Moreover, even if we are to accept Mr. Awasthy's contention we will be driven to the conclusion that at least two interpretations are possible so far as section 2(18) (b) (ii) is concerned: one canvassed by Mr. Awasthy, learned counsel for the Department, and the other by Mr. Dastur, learned counsel for the assessee. In regard to the interpretation of fiscal statutes, the rule is well-settled that where two interpretations are possible, that interpretation should be adopted which is beneficial to the assessee. In this view of the matter, we see no reason to differ from the decision of the Tribunal.

(7) For the reasons recorded above, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Department. There will be no order as to costs.

PATTAR, J.—I agree.

B. S. G.

REVISIONAL CIVIL

Before M. R. Sharma, J.

SURAT SINGH,—*Petitioner*

*versus*

NAFE SINGH, ETC.—*Respondents.*

C. R. 802 of 1973

March 28, 1974.

*Code of Civil Procedure (Act V of 1908)—Order 21 Rule 90—Punjab High Court Rules and Orders Volume I Chapter 12-L, rule 21 (ii)—Property worth more than Rs. 500 auctioned in execution of decree by an agent of the Court Auctioneer—Such auction—Whether illegal—Objections regarding the illegality not taken in the application for setting aside of the sale—Whether can be entertained later.*

Surat Singh v. Nafe Singh, etc. (Sharma, J.)

*Held*, that where a property of the value above rupees five hundred is auctioned in the execution of a decree by the agent of the Court Auctioneer, the auction is illegal being against the provisions of rule 21(1), Chapter 12-L of Punjab High Court Rules and Orders Volume I. Even if the objection regarding such illegality is not taken in the application for setting aside the sale, it can be entertained at a latter stage because the sale is not only irregular but is conducted in violation of mandatory provisions of law.

*Petition under Section 115 C.P.C. and 43 of Punjab Courts Act, for revision of the order of Shri B. S. Yadav, District Judge, Rohtak, dated the 26th May, 1973, reversing that of Shri M. K. Bansal, Sub-Judge, Ist Class, Sonapat, dated the 17th July, 1971; and returning the execution file to Shri V. K. Kaushal, Senior Sub-Judge, Sonapat for holding fresh auction about the attached gher and directing the parties to appear in the transferee Court on 6th June, 1973.*

Subhash Chandar Kapur, Advocate, for the petitioner.

D. S. Chahel, Advocate, for the respondents.

#### JUDGMENT

M. R. SHARMA, J.—This revision petition is directed against the judgment dated 26th of May 1973, delivered by the learned District Judge, Rohtak. The learned Judge had accepted the appeal against the judgment dated 17th of July 1971, of the learned Subordinate Judge First Class, Sonapat, by which he dismissed the objection-petition filed by the respondents under Order XXI Rule 90, Code of Civil Procedure.

(2) The petitioner obtained a money decree against Nafe Singh respondent. In execution of that decree he got a *gher* belonging to the judgment-debtor attached and sold on 27th of September, 1970. The petitioner had succeeded in getting permission of the learned Executing Court to bid at the time of the auction. The auction was conducted by the Agent of the Court Auctioneer and the *gher* belonging to the judgment-debtor was knocked down for a sum of Rupees one thousand. The respondent filed objections under Order XXI Rule 90 of the Code of Civil Procedure that the property in dispute was worth Rupees five thousand which the petitioner was able to secure by colluding with the Agent of the Court Auctioneer for a paltry sum of Rupees one thousand. These objections did not prevail with the learned trial Court. The learned

District Court relied upon Rule 21(ii) of Chapter 12-L of High Court Rules and Orders, Volume I, which reads as under:—

“21(i) \* \* \* \*

(ii) All sales of property whose estimated value exceeds Rs. 500 shall be conducted under the general supervision of the Court Auctioneer. Sales of property whose estimated value is Rs. 500 or less may be conducted by agents of the Court Auctioneer. In all cases the Court Auctioneer is responsible for proper compliance with all legal requirements and for all the acts of his agents.

(iii) \* \* \* \*

He came to the conclusion that where property of the value above Rupees five hundred was to be sold the sale could not be conducted by an Agent of the Court Auctioneer and, as such, the sale held was illegal. The learned District Judge was particularly impressed with the fact that the decree-holder himself mentioned the value of the property at Rupees one thousand in his application under Order XXI Rule 66, Civil Procedure Code, and this fact came to the notice of the Court Auctioneer.

(3) The learned counsel for the petitioner has argued that this objection had not been raised before the learned trial Court and the learned lower appellate Court should not have allowed it to be raised. Reliance in this behalf is placed on *Volkart Brothers of Karachi v. Ghulam Hamdani and others* (1). Speaking for the Division Bench, Shadi Lal, Chief Justice observed:

“The Court should not consider any objections which are not expressly taken in the application, and there can be little doubt that the objections, which may now be taken by the judgment-debtors, would be barred by limitation. It must be remembered that the application to set aside the sale was made on behalf of the minors by their duly appointed guardian, and there is no reason why he should not have specified the objections in the application made by him.”

(1) A.I.R. 1932 Lah. 576.

Surat Singh v. Nafe Singh, etc. (Sharma, J.)

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This was, however, a case in which the Court was concerned merely with the question of irregularity of the sale. In my considered opinion, where the sale is conducted in violation of mandatory provisions of law, the principle enunciated in this authority would not apply.

(4) It was then argued by the learned counsel for the petitioner that the following proviso had been added to Order XXI Rule 90, Civil Procedure Code, with effect from 1st of November, 1966 :—

“Provided further that no such sale shall be set aside on any ground which the applicant could have put forward before the sale was conducted.

He has argued that the judgment-debtor could have protested before the Court that the sale was being conducted by an unauthorised person before the actual conduct of the sale, and so such an objection should not be allowed to be raised at any subsequent stage. This objection is also untenable. When the decree-holder himself gave an assessment of the probable value of the property and this matter came to the notice of the Court Auctioneer, the judgment-debtor could very well have thought that the Court Auctioneer would act in accordance with law and himself proceed to auction the property. The judgment-debtor could not have foreseen that the Court Auctioneer would not perform his duties enjoined upon him by law. In any case, the judgment-debtor could only come to know if he happened to be on the spot at the time of the auction. If the auction was conducted at a distant place then it would be physically impossible for the judgment-debtor to raise such an objection before the Executing Court. This proviso was enacted so that all such objections regarding the sale ability of the property etc., which can be conveniently decided before the sale is conducted, should not be re-agitated after the property is put to auction. This proviso is not intended to legalise a sale which is conducted in utter violation of the mandatory provisions of law.

(5) For the reasons mentioned above, this revision petition fails and is accordingly dismissed. There is no order as to costs.

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K.S.K.