

Before D. S. Tewatia and G. C. Mital, JJ.

RAM SINGH

—D.H.

versus

UTTAM CHAND

—J.D.

Civil Reference No. 2 of 1982

February 11, 1985

Code of Civil Procedure (V of 1908)—Order 21, Rules 85 and 86—Property of judgment-debtor ordered to be sold in execution of a decree—Decree-holder permitted to bid in auction subject to certain conditions imposed by executing Court—Decree-holder purchasing the property—Conditions imposed on decree-holder not complied with but the sale confirmed up to the High Court—Sale in favour of decree-holder—Whether a nullity—Executing Court—Whether can entertain objections against a void sale even after its confirmation.

Held, that it was for the Executing Court to see whether the provisions of Order 21, Rules 84 and 85 of the Code of Civil Procedure, 1908 have been complied with or not, even if the judgment-debtor could not bring these to the notice of the Court. Under Order 21, Rule 85 certain conditions were imposed on the decree-holder and if the said conditions are not complied with, the sale proceedings would become a nullity and the sale nonest and void. As such it has to be held that regarding void sales objections can be entertained even after the confirmation of the sale.

(Paras 8 and 10).

Civil Reference made to the Hon'ble Punjab and Haryana High Court under Order XLVI of the Code of Civil Procedure by the Sub-Judge, 1st Class, Kaithal, on dated 1st May, 1982 to decide the following question of law involved in the case:—

- (1) *Can the sale in execution of the decree confirmed by the Hon'ble High Court, be set aside by the trial Court under section 47 of the Code of Civil Procedure ?*
- (2) *Can the objection regarding non-deposit of purchase money within time be entertained after the confirmation of sale ?*

Case referred by Hon'ble Justice Mr. D. S. Tewatia to a larger Bench on dated August 17, 1982 as the case involved important question of law. The Division Bench consisting of Hon'ble Mr. Justice

Ram Singh v. Uttam Chand (G. C. Mital, J.)

D. S. Tewatia and Hon'ble Mr. Justice Gokal Chand Mital decided the case on February 11, 1985.

Jagjit Singh, Senior Advocate, Ashok Aggarwal, Advocate with him, for the Petitioner.

Nemo for the Respondent.

JUDGMENT

Gokal Chand Mital, J.:

(1) Ram Singh, decree-holder was the highest bidder in a court auction sale held on 20th November, 1978 which was conducted in pursuance of a money decree for Rs. 11,500 with costs and interest at the rate of 6 per cent per annum, obtained by the decree-holder against Uttam Chand, judgment-debtor. The judgment-debtor raised certain objections against the auction sale, which were accepted by the Executing Court but on decree holder's revision to this Court, the revision was allowed and after setting aside the order of the Executing Court the objection petition filed by the judgment-debtor was dismissed and the auction sale made in favour of the decree-holder in the sum of Rs. 20,000 was confirmed. The decree-holder had participated in the auction sale in view of the following order passed by the Executing Court under Order 21, Rule 72 of the Code of Civil Procedure (hereinafter referred to as the 'Code'):

"Heard. Affidavit filed by the decree-holder has been seen. The auctioneer should permit the decree-holder to bid at the auction if no one else is prepared to give a bid. If the bid of the decree-holder is accepted, then he may be allowed to set off his decretal amount against 1/4th of the sale price which he may have to deposit at the fall of hammer."

(2) In view of the aforesaid order the decree, holder did not deposit Rs. 5,000, 1/4th sale price on the fall of hammer. Under Order 21, Rule 85 of the Code the decree-holder was to pay the balance 3/4th of the sale consideration, i.e., Rs. 15,000 before the Court was to close on the 15th day from the sale of the property. The decree-holder did not deposit this amount within the aforesaid prescribed period nor had deposited till the judgment-debtor's objections were accepted by the Executing Court, nor had deposited till the revision was allowed by this Court and the auction sale

was confirmed nor deposited the same till 17th March, 1982 when the judgment debtor filed objections before the Executing Court under section 151 read with Order 21, Rules 84, 85 and 86 of the Code for declaring the auction sale to be null and void in view of the decision of the highest Court of the Land in *Mani Lal-Mohan Lal Shah and others v. Sardar Saved Ahmed Saved Mohammad and another*, (1), and for a direction to re-auction the land under Order 21, Rule 86 of the Code. The factual position as it obtains today is that the decree-holder has not deposited the balance auction price even till today. However, decree-holder moved the Executing Court on 17th March, 1982 praying that the total decretal amount, costs of the suit and interest be adjusted towards the sale price of Rs. 20,000. Two days before that, i.e., on 15th March, 1982, the decree-holder filed an application before the Executing Court intimating it that he wants to deposit the amount as would be ordered by the Court.

(3) The Executing Court considered the entire matter and came to the conclusion that the decree-holder's failure to deposit the 3/4th of the sale price, rendered the sale proceedings as a complete nullity as if no sale at all took place in view of *Manilal-Mohan Lal Shah's case* (supra). It took notice of the fact that under Order 21, Rule 72 of the Code, the Executing Court had allowed set off against 1/4th of the sale price. It further concluded that even if it is assumed for the sake of argument that set off for the entire decretal amount including costs and interest is allowed to the decree-holder, still some balance was left to be deposited by him because the decree was for Rs. 11,500, costs amounting to Rs. 1,497.35 and the interest worked out to Rs. 5,145.35. On this basis also, it concluded that the sale was a complete nullity and there was no option but to re-sell the property in view of the mandatory provisions of Order 21, Rule 86 of the Code. In coming to the aforesaid conclusion it also relied upon *Nichhattar Singh and others v. Babu Khan and others* (2), *Siri Bhan v. Jit Singh and another* (3) and *Nacharuddi Safui v. Avod Ali* (4). However, the Executing Court found difficulty in declaring the auction sale to be nullity and in ordering fresh auction in view of the fact that the auction sale had been confirmed by this Court and whether the objection regarding the non-deposit of the entire purchase money

(1) A.I.R. 1954, S.C. 349.

(2) A.I.R. 1972, Pb. and Hary 204.

(3) A.I.R. 1956 Pepsu 77.

(4) A.I.R. 1951 Calcutta, 319.

Ram Singh v. Uttam Chand (G. C. Mital, J.)

within time could be entertained after the confirmation of sale. Accordingly, he proposed the following two questions for opinion of this Court and referred the matter under Order XLVI of the Code,—*vide* order, dated 1st May, 1982:—

“(1) Can the sale in execution of the decree confirmed by the Hon'ble High Court be set aside by the trial Court under section 47 of the Code of Civil Procedure ?

(2) Can the objection regarding non-deposit of purchase money within time be entertained after the confirmation of sale?”.

(4) Initially, D. S. Tewatia, J., before whom reference came up for decision was of the opinion that the questions were of considerable legal importance and should be decided by a larger Bench. This is how, the matter has been placed before us.

(5) Notice of the reference was issued to both the sides. Only the decree holder is represented before us and none has appeared on behalf of the judgment-debtor in spite of service. Accordingly, we proceed to decide this reference *ex parte* against the judgment-debtor.

(6) After hearing the learned counsel for the decree holder and on perusal of the matter we are of the opinion that on the peculiar facts of this case we are in agreement with the findings recorded by the Executing Court that the auction sale held on 20th November, 1978 was a complete nullity and it has to be deemed that upon non-compliance with the provisions of Order 21, Rule 85 of the Code as if there was no sale at all in view of *Manilal-Mohan Lal Shah's case* (supra). In the aforesaid case the provisions of rule 86 of the Code were kept in view. Rule 86 of Order 21 of the Code provides that in the event of a default the Court is bound to re-sell the property. Therefore, we are in agreement with the Court below that it was a case where the property deserved to be re-sold.

(7) Adverting to the first question, we find that there is no precedent on the point. We did not have the advantage of hearing arguments on behalf of the judgment-debtor since appearance has not been put on his behalf. Therefore, on peculiar facts of this case we permit the Executing Court to set aside the sale confirmed by this Court and to re-sell the property under Order 21, rule 86 of the Code in accordance with law. However, if the judgment-debtor deposits the entire decretal amount along with costs and interest

before the property is sold, then the property may not be sold. In this case the aforesaid direction would serve the purpose and we express no opinion on the first question as an abstract question of law. Till opinion is expressed by this Court in some other case it will suffice to say that whenever a similar situation arises before the Executing Court, it may refer the matter for opinion of this Court as has been done in this case.

(8) Adverting to the second question, it was for the Executing Court to see whether the provisions of Order 21, Rules 84 and 85 of the Code have been complied with or not, even if the judgment-debtor could not bring these to the notice of the Court. In *Nichhattar Singh's case* (supra) it was laid down that if provisions of Order 21, rule 85 of the Code are not complied with, the sale proceedings become a nullity and the Court is bound to put the property to re-sale under rule 86 of the Code irrespective of the fact that no application has been made by any party to the proceedings to challenge the sale. In *Kailash Nath Mehte v. The State of Punjab and others* (5), it was held that once there is violation of provisions of Order 21, rule 85 of the Code the sale becomes *non est* and void and there is no necessity of challenging the sale nor can there be any question that the objections filed to impugn the sale were time barred.

(9) On behalf of the decree holder, who is the auction-purchaser, it was argued by Shri Jagjit Singh, Senior Advocate that the aforesaid two decisions would not be laying down correct law in view of *Merla Ramanna v. Nallaparaju and others* (6). The facts of that case were entirely different. There the mortgage decree authorised the sale of the mortgagee rights and not the lands which were the subject-matter of the mortgage. The sale of land was held to be void. When the judgment-debtor applied to the Executing Court to get possession of the land on the ground that the sale of land was void, the opposite side raised an objection that the application was filed beyond 30 days and, therefore, was time barred. On those facts it was held that the application was within three years of date of dispossession and therefore, it was within limitation. The order of the High Court confirming the sale was passed on 17th December, 1981 and the judgment-debtor filed objections before the Executing Court on 17th March, 1982 bringing to its notice that the provisions of Order 21, Rule 85 of the Code had not been complied with by the

(5) 1982, P.L.R. 71.

(6) A.I.R. 1956, S.C. 87.

Sarwan Singh v. The State of Punjab and others
(I. S. Tiwana, J.)

decree holder, who was the auction purchaser, and, therefore, the sale was null and void and the property had to be re-sold. In view of the aforesaid Supreme Court decision in *Merla Ramanna's case*, the starting point of limitation for a void sale would be when the judgment-debtor is dispossessed from the sold property. If the judgment-debtor was in possession of the property on 17th December, 1981 when the sale was confirmed by this Court, or continued to be in possession till he filed objections on 17th March, 1982, the limitation would not be deemed to have started against him. Assuming that the judgment-debtor was already out of possession, then the starting point of limitation would be 17th December, 1981 when the sale was confirmed. The objection petition by the judgment-debtor was filed within three years of the aforesaid date and, therefore, the Supreme Court decision in *Merla Ramanna's case* (supra) in no way goes against the judgment-debtor.

(10) The matter may be looked at from another angle. In *Merla Ramanna's case* (supra) the sale was confirmed on 26th June, 1936 and possession was taken on 15th December, 1936. The limitation was counted from the date of taking possession. Hence if sale is void the objections can be entertained even after confirmation of sale. Accordingly, we answer the second question in the affirmative that regarding void sales, objections can be entertained even after the confirmation of the sale.

(11) Copy of this order be sent to the Executing Court for proceeding further in accordance with law and subject to the observations made in the order. There will be no costs in these proceedings.

D. S. Tewatia, J.—I agree.

H. S. B.

Before P. C. Jain, A.C.J. and I. S. Tiwana, J.

SARWAN SINGH,—Petitioner

versus

THE STATE OF PUNJAB AND OTHERS—Respondents.

Civil Writ Petition No. 352 of 1984

February 16, 1985

*Punjab Civil Services (Punishment and Appeal) Rules, 1970—
Punjab Civil Services Rules, 1953, Volume I, Rule 4.7 and 4.12—
Stoppage of an increment with cumulative effect—Whether a major*