

CIVIL REVISION.

Before *Suhrawardy and Patterson J.J.*

SURENDRAMOHAN SARKAR

v.

MANMATHANATH BANERJI.*

1930

Aug. 18.

Sale—Auction sale, when complete—When court can refuse to accept the highest bid—Code of Civil Procedure (Act V of 1908), O. XXI, r. 84; App E, form No. 29.

Sale of property in an auction by the order of a court, although held by an officer of the court or by any person appointed in this behalf, is nevertheless a sale by the court itself. It is not completed until the court formally accepts the bid and declares the purchaser under Order XXI, rule 84 of the Civil Procedure Code. Prior to such order, the bidder, whose bid was accepted by the officer at the time of the bid, does not acquire any interest in the property and the court can, for adequate reasons, direct the re-sale of the property without any notice to the bidder.

Jaibahadar Jha v. Matukdhari Jha (1) followed.

The power of the court to refuse to accept a bid is not limited by the condition that the highest bidder shall always be declared the purchaser if in the opinion of the court or the officer holding the sale the price offered appears so clearly inadequate that it is advisable to refuse to do so. There may be circumstances under which it would be wrong on the part of the court to accept a bid which, in his opinion, is not honest and fair.

Fala Krishna Pal v. Pyari Santosh Pal (2) dissented from.

CIVIL RULE obtained by the auction-purchaser.

The material facts appear in the judgment.

Beereshwar Bagchi for the petitioner.

Kamalkrishna Maitra for the opposite party.

SUHRWARDY J. This Rule is directed against an order of the court refusing to review an order passed by it in connection with an execution sale. Some properties were put up for sale by the Subordinate Judge of Pabna, of which lot No. 1, among other lots, was purchased by the petitioner on the 22nd March,

*Civil Revision, No. 842 of 1930, against the order of Nripondranath Guha, Subordinate Judge of Pabna, dated April 14, 1930.

(1) (1923) I. L. R. 2 Pat. 548.

(2) (1923) Civ. Rev. Case No. 127 of 1923, decided by Pantou J. on the 27th March.

1930, for Rs. 670, it being the highest bid. On the 24th March, 1930, a report by the *nâzîr* was placed before the Subordinate Judge for accepting certain bids. The decree-holder, thereupon, filed a petition saying that lot No. 1 was sold for an inadequate price and expressed his willingness to purchase it for a higher amount. The property was resold and purchased by the decree-holder for Rs. 800. The petitioner's case is that after he purchased the property, he paid the poundage fee and deposited one-fourth of the purchase money and went out of town. When he came back, he found that the property had been resold to the decree-holder on the 24th March, 1930. On the 3rd April, 1930, the petitioner filed an application for review before the Subordinate Judge. The learned Subordinate Judge, by his order, dated the 14th April, 1930, dismissed the said petition.

The grounds upon which the judgment of the court below is based are that the sale does not become complete before it has been accepted by the presiding officer of the court and, further that, in the circumstances of this case, he has been justified in accepting the higher bid of the decree-holder in the interest of the judgment-debtor. The order of the lower court has been attacked upon two grounds, *firstly*, that the learned Subordinate Judge had no jurisdiction to resell the property after it was knocked down to the petitioner; and, *secondly*, that if he had the power to do so, proper notice ought to have been given to the petitioner.

As regards the first ground, the provisions of the Code seem to be quite clear that the sale of the property in an auction held by the court does not become complete before its acceptance by the court. Under Order XXI, rule 65, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf and shall be made by public auction. Though the sale may be made by an officer of the court or by any person appointed in this behalf, the

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sale is sale by the court : the officer of the court, for instance, the *nâzir* or any person empowered by the court, is simply a ministerial officer appointed to carry out certain duties imposed upon him by the court. After the sale is held and completed, so far as the bidding is concerned, the matter must be placed before the court and, under Order XXI, rule 84, on every sale the person declared to be the purchaser shall pay, after such declaration, a deposit of twenty-five *per cent.* on the amount of his purchase money to the officer conducting the sale. Accordingly, before such declaration is made, the sale does not become complete and effective and the bidder does not acquire any interest in the property. We are supported in our view by the decision in the case of *Jaibahadar Jha v. Matukdhari Jha* (1), where Macpherson J. says as follows : "The function of "the *nâzir* or other officer appointed by the court to "conduct the auction is of a ministerial character : "if he conducts it in presence of the presiding officer, "the latter is still in direct charge of it, forthwith "declares under Order XXI, rule 84, who the "purchaser is and signs the formal order, and the sale "is not complete until the declaration has been made "and the order signed. Equally when the auction "is (for reasons of convenience) not held in his "presence, the presiding officer is still in charge of it "and the officer conducting the sale is in no more "responsible position than if he were conducting it "in the presence of the presiding officer : that the sale "may be completed, not only the order of the presiding "officer to close the bidding, but also his order under "Order XXI, rule 84, formally accepting the bid and "declaring the purchaser, is required." In the court below, as well as before us, reference has been made to an unreported decision *Fala Krishna Pal v. Pyari Santosh Pal* (2), which says that the officer conducting the sale has inherent authority to accept the bid and

(1) (1923) I. L. R. 2 Pat. 548, (2) (1923) Civ. Rev. Case No. 127 of 1923, decided by Panton J. on the 27th March.

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knock down the property and that the order of the court refusing to recognise the bid and postponing the sale was without jurisdiction. As the proposition of law indicated there seemed to us to be startling, we sent for the record. Mr. Justice Panton sitting singly had to determine the question of the power of the court to order a re-sale under circumstances which are very different from those in the present case. There, the decree-holder had purchased the property for a certain sum, after which the judgment-debtor applied for adjournment of the sale for a month and the court did not accept the decree-holder's bid and adjourned the sale for a month. The case was heard *ex parte*. Mr. Justice Panton relied upon condition No. 3 in the conditions of sale mentioned in the proclamation of sale according to the form given in Appendix E to the Code of Civil Procedure and held that the Subordinate Judge acted without jurisdiction in not accepting the decree-holder's bid and adjourning the sale. The condition is to the effect that the highest bidder shall be declared to be the purchaser of any lot, provided that it shall be in the discretion of the court or the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so. In the case before Panton J. there is nothing to indicate that the court thought that the price offered by the decree-holder was clearly inadequate and on this ground the learned judge held that the order of the court refusing to accept the decree-holder's bid was without jurisdiction. I am not prepared to agree with the learned Judge in this interpretation of the law and to hold that the power of the court to refuse to accept bids is limited to the condition mentioned in the sale proclamation, for it is evident that there may be circumstances under which it would be not only inadvisable and inequitable, but wrong on the part of the court to accept a bid which, in his opinion, is not honest and fair. Be that as it may, the decision by Mr. Justice Panton is no authority for the purposes of the present

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case. In this case, the learned Subordinate Judge clearly indicates that he refused to accept the petitioner's bid, because he got a higher bid and he practically held that the bid offered by the petitioner was clearly inadequate. This ground must, therefore, be overruled.

As regards the second ground, the petitioner has no absolute right to notice. It was his negligence to go away before the bid was accepted by the court. He had not acquired any vested right in the property and was, therefore, not entitled to any notice of the time when the matter was placed before the court for formal acceptance or when the court refused to accept any particular bid for valid reasons. No authority has been placed before us in support of the contention that a person in the position of the petitioner is entitled to notice before the property is ordered to be resold. This ground also fails.

The result, accordingly, is that this Rule is discharged with costs. Hearing-fee, two gold mohurs.

PATTERSON J. I agree.

Rule discharged.

A. C. R. C.