

## CIVIL APPELLATE.

Before Henderson and R. C. Mitter J.J.

1935  
May 28.

SYLHET CO-OPERATIVE TOWN BANK,  
LIMITED

v.

RASIKCHANDRA CHAUDHURI\*.

*Execution—Sale by court—Leave to bid to decree-holder—Condition, if may be imposed by court—Failure to fulfil condition, Effect of.*

An executing court can impose a condition to the permission given to the decree-holder to bid at a sale held by court. Failure to fulfil such condition is not a ground for dismissal of the execution case.

*Raghunath Rai Mahadeva v. Jatan Ram Sheo Narain (1), Badri Sahu v. Peare Lal Misra (2) and Mangat Rai v. Babu Ram (3) not applied.*

APPEAL by decree-holders.

The facts of the case and arguments in the appeal appear sufficiently from the judgment.

*Nripendrachandra Das and Beerendrachandra Das* for the appellants.

The respondent did not appear.

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 the 23rd March, 1933. The decree-holder applied for bringing the property to sale, and on the 17th August, 1933,

\*Appeal from Appellate Order, No. 391 of 1934, against the order of S. M. Masih, District Judge of Sylhet, dated April 26, 1934, affirming the orders of Shachikanta Ray, First Munsif of Sylhet, dated Aug. 17 and 23, 1933.

- (1) [1934] A. I. R. (Pat.) 345;      (2) [1926] A. I. R. (Pat.) 140;  
112 Ind. Cas. 620.                      92 Ind. Cas. 350.  
(3) 1929] A. I. R. (All.) 85.

asked for permission to bid. This permission was given on condition that his bid was up to the decretal amount. On the 22nd August, 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 *nâzir* 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 the 23rd August, 1933.

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 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.

In support of the first proposition, the learned advocate for the appellant has relied on the following decisions: *Raghunath Rai Mahadeva v. Jatan Ram Sheo Narain* (1), *Badri Sahu v. Peare Lal Misra* (2) and *Mangat Rai v. Babu Ram* (3). 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 of *Badri Sahu* (2). 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

1935  
 Sylhet  
 Co-operative  
 Town Bank,  
 Limited  
 v.  
 Rasikchandra  
 Chaudhuri.  
 R. C. Mitter J.

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1935

*Sylhet**Co-operative  
Town Bank,  
Limited*

v.

*Rasikchandra  
Chaudhuri.**R. C. Mitter J.*

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. It has been laid down that if a decree-holder, who has got no permission to bid 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, we think, it has power to impose any condition to the permission to bid at a court sale. The power to impose a condition, in our opinion, 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.

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.

The orders of the court 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.

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

HENDERSON J. I agree.

*Appeal allowed.*

S. M.

1935  
 Sylhet  
 Co-operative  
 Town Bank, .  
 Limited  
 v.  
 Rasikchandra  
 Chaudhuri.  
 R. C. Mitter J.