

REVISIONAL CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice

1933
April, 20

JANKI PRASAD (AUCTION PURCHASER) *v.* LEKHRAJ
AND OTHERS (JUDGMENT-DEBTORS)*

Civil Procedure Code, order XXI, rule 89—Payment to decree-holder, out of court, of amount entered in proclamation of sale—Deposit in court of five per cent. of purchase money—Valid compliance with requirements of the rule.

Where a judgment-debtor, within thirty days of the auction sale, paid to the decree-holder out of court the sum entered in the proclamation of sale and deposited five per cent. of the purchase money in court for the auction purchaser, it was held that the conditions laid down in order XXI, rule 89 of the Civil Procedure Code were complied with and the sale was rightly set aside. The rule entitles the judgment-debtor to deduct the amount which has actually been received by the decree-holder since the date of the proclamation, and there is nothing to restrict the scope of the rule to payments made before the sale.

In such a case it must be found that there was actual payment to the decree-holder; a mere compromise or admission of the decree-holder would not be sufficient.

Dr. N. C. Vaish, for the applicant.

Mr. P. M. L. Verma, for the opposite parties.

SULAIMAN, C. J. :—This is an application in revision by an auction purchaser from an appellate order setting aside a sale under order XXI, rule 89 of the Code of Civil Procedure.

The property was sold on June 23, 1931, and an application under order XXI, rule 89 was filed on July 22, 1931. It contained the allegation that on that date he had paid the amount specified in the proclamation of sale to the decree-holder, and he deposited in court an amount equal to 5 per cent. of the purchase money. The learned Munsif held that a satisfaction or adjustment of the decree out of court was insufficient and accordingly

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dismissed the application. On appeal the learned Judge has pointed out that the ruling of their Lordships of the Privy Council in the case of *Nanhelal v. Umrao Singh* (1), laying down that a satisfaction or adjustment of the decree between the decree-holder and the judgment-debtor subsequent to the sale is of no effect and cannot prejudice the rights of the auction purchaser, did not apply to the facts of this case because in this case the judgment-debtor paid to the decree-holder, within thirty days from the date of the sale, the amount specified in the proclamation of sale. The learned Judge has again repeated his finding and has held that as the decree-holder received within thirty days the amount specified in the proclamation of sale the application was good.

It is quite clear that the learned Judge meant to record a definite finding that there was not merely an adjustment or compromise of the decree out of court between the decree-holder and judgment-debtor, but that there was an actual payment of the amount specified in the proclamation of sale by the judgment-debtor to the decree-holder. It may be that this finding is based merely on the admission of the decree-holder, but no objection is taken in the grounds of revision that there was no legal evidence to support the finding. I must therefore proceed on the assumption that the judgment-debtor paid the amount specified in the proclamation of sale to the decree-holder within thirty days of the sale and deposited the amount required for payment to the auction purchaser.

Order XXI, rule 89, sub-rule (1)(b) requires the judgment-debtor to deposit in court "for payment to the decree-holder the amount specified in the proclamation of sale . . . less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder." This rule, therefore, entitles the judgment-debtor to deduct the amount which has already been received by the decree-holder after the date of the

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proclamation. The rule does not say 'received by the decree-holder up to the date of the sale'. I am, therefore, unable to put any such restriction on the scope of the rule. Obviously, if the amount has been actually received by the decree-holder within thirty days, the judgment-debtor need not deposit the amount in court over again. The question, whether the amount has been actually received by the decree-holder, is one of fact. Obviously a mere compromise or admission of the decree-holder would not be sufficient. It would be incumbent on the judgment-debtor to satisfy the court that the amount not deposited in court had been actually received by the decree-holder within the time fixed.

The case of *Nanhelal v. Umrao Singh* (1), decided by their Lordships of the Privy Council, is certainly distinguishable. In that case the application for the setting aside of the sale was one under order XXI, rule 90 and not under order XXI, rule 89. It was long after the expiry of the thirty days that another application was made on the ground that there had been an adjustment between the decree-holder and judgment-debtor subsequent to the expiry of thirty days from the date of the sale. Their Lordships accordingly pointed out that such an adjustment was of no avail and could not prejudice the auction purchaser. In the present case, on the finding of the lower appellate court, the amount was actually received by the decree-holder from the judgment-debtor himself before the expiry of the period of thirty days. It seems to me that there was no defect in the application. In any case, even if the view taken by the lower appellate court were wrong in point of law it would not be possible to interfere in revision under section 115 of the Code of Civil Procedure. The lower appellate court had jurisdiction to hear the appeal and even to decide it wrongly. The application is dismissed with costs.

(1) [1931] A.L.J., 257.