

## APPELLATE CIVIL.

*Before Mr. Justice Chari.*

AFAZUDDIN

v.

HOWELL AND OTHERS.\*

1928

June 23.

*Court-sale—Highest bidder for immoveable property—Sale when complete—Fall of the hammer—Acceptance by Court-officer essential—Bid on fall of hammer is still an offer—Civil Procedure Code (Act V of 1908), O. 21, r. 84.*

The highest bidder at a Court-sale of immoveable property becomes the purchaser thereof not when the bid is accepted by the fall of the hammer, but when the presiding officer of the Court has accepted the bid and declared the bidder to be the purchaser. The Court can accept or reject the bid which is still an offer when the hammer falls, and likewise the bidder is at liberty to withdraw this offer until the Court has accepted it in the above manner.

*Jalbahadar v. Matukdhari, 2 Pat. 548—referred to.*

*Tun Aung Gyaw* for the appellant.

*Jeejeebhoy* for the respondent.

CHARI, J.—This case comes before me for disposal on a point raised in my judgment some time ago. As the point was one which was raised by me after the argument had closed, I posted the case for further argument which was heard only to-day on account of some of the parties being dead and their legal representatives having to be brought on the record.

The point now for consideration is whether a person who has not been declared a purchaser of immoveable property in a Court auction sale, but whose bid had been accepted by the fall of the hammer and who fails to deposit the 25 per cent. of the amount of his purchase-money, can be made liable for the difference in price when the property is sold immediately after.

---

\* Civil Second Appeal No. 47 of 1925 against the order of the District Court of Pegu in Civil Miscellaneous Appeal No. 238 of 1924.

1928

AFAZUDDIN  
v.  
HOWELL AND  
OTHERS.

CHARI, J.

I have already dealt with the facts of the case in my previous judgment and I have drawn attention to the fact that even the Bailiff is not quite<sup>er</sup> sure whether the person withdrew his offer before or after the fall of the hammer. I thought at first it was necessary to remand the case for a finding whether the defaulting bidder had actually been declared to be the purchaser, but it is unnecessary in view of the evidence of the Bailiff. In the case to which I refer in my judgment, *Jaibahadar Jha v. Matukdhari Jha* (1), it was held that an execution sale is not complete until the presiding officer of the Court has accepted the bid and declared the bidder to be the purchaser under Order 21, rule 84. That rule clearly states that the bidder shall pay the 25 per cent. deposit only after such declaration. In the Patna case, it is stated that the presiding officer of the Court to whom an order declaring that a person has purchased the property is submitted for signature should enquire before signing the bid from the persons present in Court whether there is any advance on the highest bid given by the officer who conducted the sale. This shows beyond all doubt that the highest bid at the time when the hammer fell was merely a conditional bid, which it was open or not to the Court to accept. If it is open to the Court to accept the bid or reject it, it must equally be open to the purchaser to withdraw his offer before it is accepted by the Court.

The learned advocate for the respondent wants to draw a distinction between the contract of an ordinary person and a bid at an auction sale. I fail to see any distinction whatever and if a bid can be kept hanging by the Court, it can equally be

---

(1) (1923) 2 Pat. 548.

withdrawn by the bidder. Two cases reported in unauthorised reports, *Fazil Meah v. Prosanna Kumar Roy* (1) and *Ratnsami Pillai v. Sabapathy Pillai* (2) deal with the same point. In the first case, the Calcutta High Court held that an execution sale is not concluded when property is knocked down to a bidder, even though he had made the necessary deposit of 25 per cent. and the bid had been accepted by the Nazir. In the Madras case, where the person conducting the sale was a receiver and not a bailiff, the High Court held that it is the acceptance by the Court that constitutes the contract and that therefore the person who asserts that the Court officer had power to bind the Court by acceptance must prove it. Under the rules of the Civil Courts Manual, the bailiff is undoubtedly the officer of the Court who is authorised to conduct the sale, but this does not imply any power to accept an offer on behalf of the Court or to make a declaration that a bidder has become a purchaser.

I hold, therefore, that it is open to a bidder to withdraw his offer, since his bid is nothing more than an offer, until that offer has been finally accepted by the Court and declaration made that he is the purchaser. His liability to make a deposit of 25 per cent. of the purchase-money only arises after such a declaration is made. As he has withdrawn the offer before the declaration, he cannot be held liable for any deficiency of price on a re-sale. I therefore allow the appeal and set aside the order of the lower Court directing the appellant to pay the deficiency. As the appellant's nephew bought the property, he ought to be satisfied with the property and there will therefore be no order for the costs of the appeal.

1928

AFAZUDDIN  
v.  
HOWELL AND  
OTHERS.

CHARI, J.