

REVISIONAL CIVIL.

Before Bhide J.

MOHAMMAD BAKHSH *alias* MOHAND
(JUDGMENT-DEBTOR) Petitioner

versus

PIRTHI CHAND (DECREE-HOLDER) Respondent.

Civil Revision No. 51 of 1932.

1932

July 6.

Civil Procedure Code, Act V of 1908, Order XLVII, rule 1: Review—competence of—where appeal is provided for but not preferred—Order XXI, rule 89: Execution by sale of property—deposit by Judgment-debtor of amount of the decree plus five per cent—Whether requirements of the rule complied with—where another decree-holder has applied for rateable distribution.

Held, that the mere fact that an appeal lies from an order by his predecessors is no ground for the Subordinate Judge refusing to 'interfere' on an application for review on which notice had been issued by the Judge who passed the wrong order—*vide* Order XLVII, rule 1, of the Code of Civil Procedure.

Held also, that where land is being sold in execution of one decree only, and the judgment-debtor deposits the amount of that decree with 5 per cent. the requirements of Order XXI, rule 89 of the Code are complied with, notwithstanding that another decree-holder has applied for rateable distribution.

Petition for revision of the order of Sardar Harnam Singh, Subordinate Judge, 4th Class, Batala, District Gurdaspur, dated the 20th June, 1931, rejecting the application for review of the order passed by Lala Sansar Chand, Subordinate Judge, 4th Class, Batala, on 8th April, 1931, confirming the sale.

BHAWANI SINGH, for Petitioner.

ANANT RAM KHOSLA, for J. L. KAPUR, for Respondent.

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MOHAMMAD
BAKHSH
v.
PIRTHI CHAND.
BHIDE J.

BHIDE J.—This is a petition for revision of an order by the Subordinate Judge, 4th class, Batala, rejecting an application for review. It appears that in execution of a decree certain house property belonging to the judgment-debtor was attached and sold. Before the date fixed for confirmation of the sale the judgment-debtor put in an application under Order 21, rule 89, Civil Procedure Code, stating that he was prepared to deposit the decretal amount with 5 *per cent.* for the auction purchaser. The application was granted and the judgment-debtor deposited Rs. 235-8-0. It appears that there was another decree-holder who had applied for rateable distribution of the assets. The learned Subordinate Judge thought that the judgment-debtor was bound to deposit the amount due to both the decree-holders, and finding that the amount actually deposited by the judgment-debtor was short of the total amount of the two decrees by Rs. 11-4-0 confirmed the sale. An application for review of this order was presented by the judgment-debtor, and it came before the successor of the Subordinate Judge who had passed the original order. It may be noted here that the latter had issued notice on the presentation of the application for review. The learned Subordinate Judge who heard the application for review, was of opinion that the order passed by his predecessor was wrong but he thought that the judgment-debtor could have appealed from the order and therefore he refused to interfere. The only words used by the learned Subordinate Judge are: "In review I am not going to interfere." It does not appear from his order on what grounds he considered it fit not to interfere when he found the order under review to be clearly erroneous. The mere fact that an appeal lay from the original order was,

in my opinion, no justification for rejecting the application for review. Order 47, rule 1, Civil Procedure Code, clearly provides that an application for review is competent in cases where an appeal is provided for under the law but has not been preferred. It seems clear from the order passed by *Lala Sansar Chand*, Subordinate Judge, of which review was sought that the learned Subordinate Judge was under the impression that the land had been sold in execution of both the decrees. As a matter of fact it was being sold in execution of one of the decrees only and under Order 21, rule 89, the judgment-debtor could be asked only to deposit the amount of that decree with 5 per cent. This amount had been deposited by the judgment-debtor. There was thus an error apparent on the face of the record, and the application for review should, in my opinion, have been granted.

I accordingly accept this petition for revision and set aside the order rejecting the application for review as well as the order of *Lala Sansar Chand*, Subordinate Judge, by which the sale was confirmed on the 8th of April 1931. The learned Subordinate Judge should resume proceedings from that stage and pass necessary order. In view of all the circumstances I leave the parties to bear their own costs of this application.

N. F. E.

Revision accepted.

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MOHAMMAD
BAKHSR
v.
BIRTHI CHAND,
BHUDE J.