Fauja Singh Vs Mohinder Singh and Others

Civil Revision No. 1797 of 2003

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 12, 2003

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 72, Order 21 Rule 85

Citation: (2003) 3 CivCC 190 : (2003) 135 PLR 520 : (2003) 3 RCR(Civil) 712

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: C.M. Munjal, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
This petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity "the Code") is directed against the order

dated 4.2.2003 passed by the Executing Court rejecting the prayer of the auction purchaser that the auction held on 6.9.2001 be confirmed and

the balance amount of 75 percent amounting to Rs. 67,500/- deposited on 10.4.2002 be accepted. The application has been rejected.

2. I have heard Shri Pawan Malik, learned counsel for the auction purchaser and am of the view that the impugned order does not call for any

interference because the provisions of Order 21 Rule 85 read with Rule 72 of the Code are mandatory in nature. The afore-mentioned provisions

read as under:

Order 21, Rule 72. Decree holder not to bid for or buy property without permission.-(1) No holder of a decree in execution of which property is

sold shall, without the express permission of the Court, for or purchase the property.

(2) Where decree holder purchases, amount of decree may be taken as payment.-Where a decree holder purchases, by himself or through another

person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are

affected by the sale, by order set aside the sale and the costs of such application and order, and any deficiency of price which may happen on the

resale and all expenses attending it, shall be paid by the decree holder."" ""Rule 85. Time for payment in full of purchase money,- The full amount of

purchase money payable shall be paid by the purchaser into Court before the Court below on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any see-off to which he may be entitled

under Rule 72.

3. A perusal of the afore-mentioned provisions makes it obvious that any failure to deposit the full amount of sale price within the specified period

of 15 days cannot avoid the consequence of sale becoming a nullity. The afore-mentioned provision came up for consideration before the Supreme

Court in the case of Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, . With regard to the time of

deposit of the full sale consideration, their Lordships observed as under:

The scheme of the rule quoted above may be shortly stated. A decree holder cannot purchase property at the Court auction in execution of his

own decree without the express permission of the Court and that when he does so with such permission, he is entitled to a set off but if he does so

without such permission, then the Court has a discretion to set aside the sale upon the application by the judgment debtor, or any other person

whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory - see

Rai Radha Krishna v. Bisheshgar Sahai, 40 Ind. App 312 AIR 1922 P.C. 356. The moment a person is declared to be the purchaser, he is bound

to deposit 25 per cent of the purchase money unless he happens to be the decree holder, in which case the Court may not require him to do so.

(Rule 84).

The provision regarding the deposit of 25 per cent by the purchaser other than the decree holder is mandatory as the language of the rule suggests.

The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree holder is entitled to the advantage

of a set off. The provisions for payment is, however, mandatory....(Rule 85). If the payment is not made within the period of fifteen days, the Court

has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to resell the property is imperative. A further

consequence of non-payment is that the defaulting purchaser forfeits all claims to the property.... (Rule 86).

xxx xxx xxx

Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the

rules requiring the deposit of 25 percent of the purchase money immediately on the person of the purchase money immediately on the person being

declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions

there is no sale at all. The rule do not contemplate that there can be any sale in favour of a purchaser without depositing 25 percent of the purchase

money in the first instance and the balance within 15 days. Where there is no sale within the contemplation of these rules, there can be no question,

of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as

a complete nullity. The very fact that the court is bound to resell the property in the event of a default shows that the previous proceedings for sale

are completely wiped out as if they do not exists in the eye of law.

4. The above mentioned view has been followed and applied by the Supreme Court in the case of Balram Vs. Ilam Singh and others, . Therefore,

there is no legal infirmity in the impugned order and the revision petition is liable to be dismissed.

For the reasons recorded above, this petition fails and the same is dismissed.