

(1921) 06 BOM CK 0013
Bombay High Court
Case No: O.C.J. Appeal No. 9 of 1921

Manaji Kuvarji

APPELLANT

Vs

Aramita

RESPONDENT

Date of Decision: June 21, 1921

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 89

Citation: (1921) 23 BOMLR 847

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

On the 10th January 1918 the 1st defendant as mortgagor was ordered to pay into Court Rs. 1,20,497 and interest and costs when taxed for payment to the plaintiff and other defendants who were mortgagees. Default having been made in payment, a decree absolute for sale was made on the 17th June 1918, and two of the mortgaged properties belonging to the first defendant were directed to be sold and the net proceeds to be applied towards the satisfaction of the decretal amount. The sale was held on the 5th August 1920 and the auction purchaser was the eighth defendant De Souza.

2. On the 29th day after the sale, i.e., the 4th September 1920, the first defendant brought into Court Rs 98,000 plus 5 per cent, with an affidavit stating " as no amount was specified in the particulars and conditions of the sale as that for the recovery of which the sale was ordered I am unable to ascertain the full amount of the decree and to pay the same into Court with this application. The moment it is calculated and ascertained I will pay the same into Court."

3. Notice was then issued to the judgment-creditors and the auction purchaser to show cause why the sale should not be set aside. The purchaser opposed the notice

contending that the 1st defendant had not complied with the provisions of Order XXI, Rull 89. That was perfectly clear from the admitted facts of the case. But it was contended that a part payment of the amount due to the decree-holder, with an undertaking to pay the balance, amounted to a deposit within the meaning of Rull 89 of Order XXI, and that, therefore, entitled the parson giving the undertaking to an order setting aside the sale.

4. Now an undertaking to pay a certain amount is not payment. and as has been laid down in previous decisions the provisions of Rule 89 are a concession allowed to judgment-debtors, they must be strictly complied with in order to enable the judgment- debtor to obtain the advantage of the concession. If part payment coupled with an undertaking to pay the balance were to be considered as payment in full then the provisions of the rule would not be complied with. So the decision of the trial judge was correct and the appeal must be dismissed with costs to the 8th defendant.