

(1924) 05 CAL CK 0029

Calcutta High Court

Case No: None

Charan Chandra  
Ghosh

APPELLANT

Vs

Rai Behari Lal Mitra  
Bahadur

RESPONDENT

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Date of Decision: May 28, 1924

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 90

Citation: AIR 1925 Cal 157

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### Judgement

1. This rule is issued against an order of the District Judge of Barisal revering an order of the Subordinate Judge of that place setting aside a sale under Order 21, Rule 90, Civil Procedure Code. The learned Subordinate Judge had held that there were suppression of sale processes and other material irregularities and set aside the sale accordingly. The learned District Judge on appeal proceeded upon one single point, namely, the absence of proof of service of notice on the decree-holder. It may be remarked that in this case the decree-holder was the auction-purchaser. The learned District Judge has found that there was no proof of service of notice of the application on the decree-holder which is necessary to entitle a Court to pass an order under Rule 90 and in this view of the matter dismissed the petitioner's application for setting aside the sale. This rule was obtained on the ground that the view taken by the Court below was wrong and that he had no jurisdiction to dismiss the petitioner's application for setting aside the sale only on the ground that no notice was served on the decree-holder and auction-purchaser. In our judgment there is a great deal of force in this contention Order 21, Rule 92 no doubt lays down that no order should be made unless notice of the application has been given to all persona affected thereby. The object of this enactment is to give notice of the application to all parties concerned and give them an opportunity of contesting it so that no order may be passed to the prejudice of any party behind his back. This object will equally be achieved if the party has otherwise notice of the application.

Rules of Procedure are not made for the purpose of hindering justice: *Indrajit Pratap Bahadur Sahi v. Amar Singh* AIR 1923 P.C. 128. If a party to a sale had notice of the application, it would not ordinarily seem necessary that a mere formality should be observed in order to comply with the requirements of the law. This provision is intended more to safeguard the interest of strangers like a stranger auction-purchaser. A view similar to this was taken in the case of *Santosh Bala Debt v. Ram Chandra Ghati* (1922) 67 I.C. 286. We, therefore, think that the order passed by the learned Judge cannot be supported and must be set aside. The case will, therefore, go back to him for an enquiry as to whether the decree-holder had really any notice of this application or not. It appears from the record of the first Court that the sale took place on the 10th February in which the decree-holder became the purchaser. The 12th March was fixed for confirmation of sale. On the 10th March this application was made and it was ordered to be put up on the 7th April for hearing and both parties were directed to appear on that date. On the 12th March it was ordered that execution case be put along with the miscellaneous case. This order may lead one to presume that the decree-holder had notice of the application. Whether he had or not should be determined on proper enquiry and in the present case the petitioner had no opportunity of proving that the decree-holder had notice of the application. The case will, therefore, go back to the learned Judge for inquiry as to whether the decree-holder had any notice of this application, and, if he holds he had he will hear the appeal on the merits.

2. Costs will abide the result. We assess the hearing-fee at one gold mohur.