

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Misc. Petition No.4671/2018

Manish Tiwari

Versus

Deepak Chotrani and others

Date of Order	08.05.2020
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner: Shri Sankalp Kochar, Advocate. For Respondents No.1 to 5 : Shri Ravish Agrawal, Senior Advocate with Shri Ashish Shroti, Advocate. For Respondents No.6 & 7 : Shri S.K. Sharma, Advocate.
Law laid down	Order XXI Rule 65 of CPC – it is mandatory to make declaration in regard to the highest bidder as purchaser at the sale by an officer of the court and such declaration has to be made with the leave of the Court – if declaration is not made, the highest bid offered cannot be said to be accepted by the Court. - in absence of any declaration, no right accrues in favour of the highest bidder to object the order made by the Court for re-auction of the property put into execution as discretion is vested with the Court for ordering the re-auction assigning reason as per the requirement of Order XXI Rule 69 of CPC.
Relevant paragraphs	8 to 21

Reserved on : 04.03.2020

Delivered on : 08.05.2020

**(O R D E R)
(08/05/2020)**

This Misc. Petition has been filed under Article 227 of the Constitution of India against the order dated 10.08.2018 and 13.08.2018 passed by the Court below whereby the Executing Court has ordered for initiation of fresh auction proceeding. Being aggrieved by the said orders, the petitioner filed this petition raising grievance that in pursuance to the execution proceedings in respect of the award passed by the Arbitrator, auction proceeding in which the petitioner has participated and his bid being highest one was accepted and, therefore, there was no occasion for the Executing Court to pass the orders impugned and to issue direction for initiating fresh auction.

2. The relevant facts are briefly stated here-in-under to appreciate the legal rival contentions urged on behalf of the parties in this petition.

“Respondent Nos.1 to 5 / decree-holders got an award dated 01.12.2011 in their favour from the sole Arbitrator. As per the said award, the decree-holders were entitled to 1/4th share of the property i.e. Sargam Cinema Hall, M.P. Nagar, Bhopal. To realize the said share, the award dated 01.12.2011 was put

into execution. In furtherance to the execution proceeding, Sargam Cinema Hall was put to auction on the basis of the order passed by the Executing Court in which the petitioner participated and quoted the highest price i.e. an amount of Rs.14.16 Crore. On 08.02.2018, the counsel for the decree-holders has requested to finalize the auction proceeding but on an objection raised by the counsel for the judgment-debtor for deciding his objection as one of their objections was pending, the Court refused to proceed further in the interest of justice and considering the fact that the application/objection filed by the judgment debtor is pending, accepted the request of judgment- debtor to decide his objection first and proceeding was adjourned for submitting reply to the pending application.

The objection submitted by the judgment-debtor under Order XXI Rule 66 of the CPC was finally decided by the Executing Court vide order dated 27.06.2018 and the same was rejected. However, on 10.08.2018, the Executing Court passed an order mentioning therein that on earlier occasion matter was fixed for auctioning the attached property, yet directed the decree-holders to pay the fresh process so that auction proceedings be re-initiated. On 13.08.2018, the Executing Court has fixed the date for auction i.e. 24.09.2018, 25.09.2018 and 26.09.2018.

The petitioner has filed this petition challenging the orders dated 10.08.2018 and 13.08.2018 passed by the Executing Court mainly on the ground that in view of the order dated 08.02.2018 when auction proceeding took place, the petitioner's bid was highest one and that was not finally accepted by the Executing Court. Merely because one objection was pending and it was required to decide, therefore, for that purpose only proceeding was extended but after deciding the objection there was no reason for the Court to pass an order for re-auction.

3. It is contended by learned counsel for the petitioner that in the impugned order, the Executing Court has not given any reason as to why in the earlier auction proceeding the bid submitted by the petitioner could not be accepted. It is claimed by the petitioner that the auction proceeding earlier held was already completed and he being highest and successful bidder was entitled to be declared as successful auction purchaser and without granting any opportunity to the petitioner, who had a vested right in the property in question, the impugned orders cannot be passed. As per the petitioner in pursuance to the highest bid submitted by him, his request for finalizing the auction was kept in abeyance only for the reason that the objection submitted by the judgment-debtor had to be decided

and after the decision of the said objection, no reason was available with the Executing Court directing fresh auction proceeding without cancelling the earlier one. It is also contended by the learned counsel for the petitioner that unless the previous auction proceeding is cancelled for any justifiable reason, fresh auction proceeding cannot be initiated and, therefore, the petitioner by the instant petition is seeking quashment of the orders dated 10.08.2018 and 13.08.2018 passed by the Executing Court and further seeking direction that the Executing Court be directed to finalize the auction proceeding held on 08.02.2018 by accepting the bid submitted by the petitioner. In support of his contentions, the learned counsel for the petitioner has placed reliance on the decisions reported in **AIR 1967 SC 608 (Janak Raj Vs. Gurdial Singh and another)** and **(2001) 6 SCC 213 (Rajendra Singh Vs. Ramdhar Singh and others)**.

4. *Per contra*, Shri Ravish Agrawal, learned Senior Counsel appearing for respondent Nos.1 to 5 has submitted that the order dated 08.02.2018 is very clear and would amount to refusal for declaring the petitioner as successful bidder and further it indicates that the Court has rightly not accepted the bid offered by the petitioner. It is also contended by the learned Senior Counsel that the order dated 08.02.2018 clearly reveals

that the Executing Court has refused the proposal submitted by the petitioner and as such refused to make declaration in favour of the petitioner considering him to be a successful bidder and has also not finalized the auction proceeding. He further submits that as per Section 6 of the Indian Contract Act, 1872 the offer submitted by the petitioner since not accepted, therefore, it is treated to be revoked. He further submits that in view of the provisions of Rule 84 of Order XXI of CPC, it was obligatory for the petitioner to deposit 25% of the amount of purchase money but that was not done by the petitioner, therefore, the order for re-sale in such default was automatic and cannot be said to be illegal. In support of his contention, he has placed reliance on the decisions **AIR 1925 CALCUTTA 557 (Tularam Bhutunia Vs. Purnendra Narain Rai and others); AIR 1942 MADRAS 776 (The Raja Of Bobbili Vs. A. Suryanarayan Rao Guru and four others)** and **AIR 1950 (ALLAHABAD) 450 (Ebadullah Khan Vs. Municipal Board and another)**.

5. I have heard the factual and rival contentions urged by the learned counsel for the parties and answered the same as discussed below.

6. In my opinion, the following questions emerge to be adjudicated:

(I) Whether the order dated 08.02.2018 and the language used therein would amount to refusal of petitioner's proposal and not accepting his bid by the Executing Court?

(II) As to whether the order passed by the Executing Court on 10.08.2018 and 13.08.2018 directing re-auction, without canceling the earlier auction proceeding, can be said to be legal or proper?

7. From the order-sheets submitted by the petitioner, it reflects that on 24.01.2018, the Executing Court as per the required provision of Rule 65 of Order XXI of CPC has fixed the date for auction i.e. 06.02.2018, 07.02.2018 and 08.02.2018 and thereafter, as per order-sheet dated 08.02.2018, it reveals that the auction proposal was submitted before the Executing Court by the office of Nazarat, Bhopal. As per the said proposal, the maximum bid was offered amounting to Rs.14.16 Crore by the petitioner. The counsel for the decree-holders had requested to finalize the auction bid, however, the counsel for judgment-debtor had raised an objection and had submitted that the application filed by him under Section 151 of the CPC be decided first and then only the proceeding in furtherance to the auction proposal submitted, be initiated. The Court, thereafter passed the order saying that since the application is pending, therefore, it is not in the interest of justice to proceed

further in pursuance to the proposal of auction submitted. For the purpose of convenience the operative part of the order passed by the Executing Court on 08.02.2018 is reproduced here-in-under:-

“डिक्रीधारी अभिभाषक ने नीलाम बोली अंतिम किये जाने का भी निवेदन किया, जिस पर निर्णितऋणी क्र.01 अभिभाषक ने आपत्ति प्रस्तुत कर आवेदन के निराकरण के उपरांत ही नीलाम प्रतिवेदन के आधार पर कोई कार्यवाही किये जाने का निवेदन किया।

जहां आवेदन लंबित है तब नीलाम बोली के संबंध में प्राप्त प्रतिवेदन के आधार पर आज कोई कार्यवाही की जाना न्यायोचित प्रतीत नहीं होता। अतः निर्णितऋणी क्र.01 का निवेदन स्वीकार किया गया।

प्रकरण आज प्रस्तुत दोनों आवेदन पत्रों के जवाब हेतु दिनांक 16/2/18 को पेश हो।”

8. From the aforesaid order and the language used therein although it is not clear and the Executing Court not in so many words has disclosed its intention that the proposal and the offer of the petitioner has not been accepted and auction proceeding is not being finalized but considering the statutory position, it can be gathered that the Court was not inclined to accept the proposal or offer submitted by the petitioner and to conclude the auction proceeding treating him to be a successful bidder. From the aforesaid order, it is also clear that the counsel for the decree-holders though made a request for concluding the auction proceeding but the Court has refused to pass any order in respect of the said proposal which was placed before the Court. For ready reference the provisions of Order XXI Rule 69 of the CPC are reproduced hereinunder:-

“69. Adjournment or stoppage of sale.– (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.”

9. If the aforesaid provisions are seen, it is clear that the Court is competent to adjourn the sale proceeding for a specified date or for specified time. Simultaneously, sub-rule (2) of Rule 69 of Order XXI further makes it clear that if the sale is adjourned for a period longer than 30 days then fresh proclamation under Rule 68 shall be made.

10. Likewise, it is necessary to go-through the conditions contained in Form No.29 which is issued under the requirement of Order XXI Rule 66 seen wherein condition Nos.3 and 4 are relevant, which are quoted hereinunder:-

“3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer

holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.”

As per condition No.4, it is clear that the Court has complete discretion to adjourn the sale proceeding subject to provision of Rule 69 of Order XXI. Thus, it is clear that the order passed by the Court on 08.02.2018 assigning reason that it would not be in the interest of justice to finalize the proceeding when application/objection is pending and adjourned the case. It is clear that the Court has exercised its discretion as per the requirement of Order XXI Rule 69. The Court has declined to accept the bid/offer of the petitioner. It is further clear that the proceedings since adjourned for more than 30 days and application/objection was decided vide order dated 27.06.2018, the Court has rightly ordered for re-auction or for initiating fresh proceedings by issuing fresh process fee.

11. However, I am not convinced with the argument advanced by the learned counsel for the respondents that as per Rule 84 of Order XXI, the petitioner was under obligation to deposit 25% of the bid amount and if the same was done re-sale was properly ordered. Here it is not a case of non-compliance of the provisions of Rule 84. Such a situation arises

only when offer or bid of the auction purchaser is accepted declaring the same to be a successful bidder then he would be required to deposit 25% of the bid amount immediately. Here in this case there was no order of acceptance of offer submitted by the petitioner, therefore, no question arises for complying with the provisions of Rule 84 and due to failure of which re-sale is ordered.

12. From the aforesaid discussion it is clear that in the present case, the Court has exercised its discretion as per the requirement of condition of sale contained in form No.29 which is in consonance with the requirement of provisions of Order XXI Rule 69 of CPC assigning reason that acceptance of bid in the fact and situation when objection of the judgment-debtor is pending, the same would amount to refusal of accepting the amount of offer and as such in my opinion no right is accrued in favour of the petitioner. In this regard it is apt to consider the amendment of our High Court made in Rule 65 of Order XXI of CPC, which reads as under:-

“Madhya Pradesh,- In order XXI, in rule 65, at the end, insert the following words,-

“Such officer or person shall be competent to declare the highest bidder as purchaser at the sale, provided that, where the sale is made in, or within the precincts of the Court-house, no such declaration shall be made without the leave of the Court.”

[Vide Madhya Pradesh Gazette, dated 16th September, 1960]”

Now, the aforesaid provision makes it clear that there must be declaration about highest bidder as purchaser which gives right to claim acceptance of bid but admittedly in the present case required declaration is missing.

13. It is also not a case of the petitioner that the Court has not judiciously exercised its discretion. The petitioner has not objected and assailed the order dated 08.02.2018 but has assailed the order whereby the Executing Court has directed for fresh auction proceeding on 10.08.2018 and 13.08.2018 whereas the Executing Court on 08.02.2018 has infact refused to accept the bid of the petitioner and as such he was not considered and declared to be a successful bidder and further it can be seen that the request for concluding the auction proceeding made by the counsel for the decree-holders was also made, but not accepted. The said order could have been challenged on the ground that the Court cannot adjourn the proceeding and there was no reason for exercising the discretion as there was no reason available with the Court for not accepting the highest bid of the petitioner. Moreover, the order dated 08.02.2018 is not under challenge.

14. The learned Senior Counsel for the respondents has also submitted that in view of Section 6 of the Contract Act, the proposal made by the petitioner has been treated to be revoked

by the lapse of reasonable time. Section 6 of the Contract Act is accordingly taken into account and is quoted here-in-under:-

“S.6 Revocation how made,— A proposal is revoked –

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of the reasonable time, without communication of the acceptance;
- (3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.”

From the aforesaid provisions, it is clear that with the lapse of time if proposal is not accepted, the said proposal is treated to be revoked. The provision of Section 6 of the Contract Act is read with the provision of Order XXI Rule 69 of CPC and the condition contained in form No.29 especially condition No.4. It is clear that in the existing facts and circumstances of the case, the proposal submitted by the petitioner quoting the highest bid in auction proceeding was revoked as the same was not accepted.

15. In this regard, the judgment relied by the learned counsel for the respondents in the case of **Ebadullah Khan** (supra), paragraph 6 onward the Court has observed as under:-

“6.To take the first question first, it would be useful to refer to Rr. 65 and 81 of O. 21 and also to para 3 of the ‘conditions of sale’ in Form 29, Appendix E, Code of Civil Procedure Under S. 65, every sale in execution of a decree has to be

“conducted by an officer of the Court or by such other person as the Court may appoint in this behalf and shall be made by public auction *in manner prescribed.*” Rule 81(1) lays down that “on every sale of immovable property the person declared to be the purchaser shall pay *immediately* after such declaration a deposit of twenty-five per cent, on the amount of his purchase-money to the officer or other person conducting the sale, *and in default of such deposit, the property shall forthwith be re-sold.*”

7. On the plain reading of this rule, it would be manifest that the sale of the property, the payment of twenty-five per cent, of the purchase money and, in case of default in this behalf, the re-sale of the property shall all take place *in the same continuation and as parts of the same proceeding.* There is nothing to suggest here that there can be any break or interval of time between any one and another of the three stages herein mentioned. I emphasise this, because the argument of the learned counsel for the applicant was that the word “declared” in the Rule meant ‘declared by the Court’ and not by the Amin; that is to say, after the last highest bid has been made, there should, in every case, be a reference to the Court which alone can accept that bid, and it is after the same has been accepted that the purchaser is to pay twenty-five percent of the purchase money, and it is after he has failed to pay this that the property can be ‘re-sold.’ This argument obviously ignores the word ‘immediately’ and the word ‘forthwith’ appearing in the Rule. These words, in my view, wholly negative the idea of any break or interval of time between one process and another, and they do unmistakably point that the various stages form an unbroken and continuous proceeding.

8. The same point was sought to be made out from para 3 of the “conditions of sale in Appendix B” to which I have already referred. This reads:

“The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally authorised to bid and provided that it shall be in the discretion of the Court or *officer holding the sale to decline acceptance of the highest bid,* when the price offered appears so clearly inadequate as to make it advisable to do so.”

The word ‘declared’ here also was interpreted by the learned counsel as ‘declared by the Court’

and not by the officer conducting the sale. There is, in my opinion, even a clearer answer to the argument in this paragraph than what we have seen in R. 84(1) of O. 21 of the CPC. The words “or officer holding the sale to decline acceptance of the highest bid” clearly authorise the said officer to ‘decline acceptance’ of that bid, and, if he is entitled to decline, he is, by parity of reasoning, also entitled to accept such a bid. I put this again and again to the learned counsel, and I confess that I got no answer. Indeed, on the clear language of the paragraph, no answer was possible.

9. As I read the word ‘declared’ in this paragraph as well as in R. 84(1), it simply implies and has reference to a necessary consequence that should follow a bidder having made the highest bid. As soon as that stage has arrived, namely, as soon as it has been found that no higher bidder is forthcoming, the Amin conducting the sale has to take cognizance of the fact and his mere recognition of the position that so and so and none other is the higher bidder by itself constitutes a ‘declaration’ of the fact that he is the highest bidder. No formal or separate order, not even by the Amin himself, is necessary to constitute a ‘declaration’ that so and so is the highest bidder. In *Nurdin v. Bulaqi Mal & Sons*, A.I.R. 1931 Lah. 78: (131 I.C. 227) and *Hoshnak Ram v. Punjab National Bank Ltd.*, A.I.R. 1936 Lah. 555 : (166 I.C. 603), it was held that after the knock by the Amin, the highest bidder would be ‘deemed’ to be ‘declared’ as the purchaser.

10. In many cases it may happen that the sale is conducted not in the court compound but far away from it, so that an immediate reference to the Presiding Officer to ‘declare’ the highest bidder as the purchaser or to accept the sale may not be feasible. In such cases, the requirement enjoined by R. 84(1) of O. 21 of the CPC that, in case of the purchaser's failure to deposit the: twenty-five per cent, of the purchase money, the property shall be ‘forthwith re-sold’ may go altogether unheeded. The anomaly between this provision and the contention that in every case the Amin should make a reference to the Court for the acceptance of the sale was clearly pointed out in *Maung Ohn Tin v. P.R. Chettyar Firm* A.I.R. 1929 Rang. 311 : (7 Rang. 425) and *Lokman Chhabilal v. Motilal Tulshi Ram*, A.I.R.

1939 Nag. 269 (I.L.R. (1941) Nag. 485). It was there held that the possibility of time intervening between the making of the highest bid and an order by the Court accepting the bid, where the Court was sitting far away could not have been within the contemplation of the framers of R. 84(1) of O. 21 of the CPC, for, otherwise, the language of the Rule would have been far different. As regards the power of the Amin to declare the highest bidder and accept and conclude the sale, other cases, *Munshi Lal v. Ram Narain*, 35 ALL. 65 : (17 I.C. 783), *Abdullah Khan v. Ganpat Rai*, A.I.R. 1930 Lah. 41 : (118 I.C. 900); *Mt. Khairan v. Alliance Bank Simla Ltd.*, A.I.R. 1919 Lah. 809 : (50 I.C. 914) and *Mannu Lal v. Nanhe Lal*, A.I.R. 1933 Nag. 123 : (29 N.L.R. 62) may also be cited.

11. Learned counsel for the applicant invited my attention to a number of cases in support his argument that it was only the Court and not the Amin who could accept and conclude a sale in favour of the highest bidder. I would notice these now.

12. The first was *Radhey Lal v. Mt. Janki Devi*, A.I.R. (22) 1935 ALL. 204 : (153 I.C. 477). There is nothing in that case showing that the Amin had really accepted the bid. The purchaser, Mt. Janki was allowed to withdraw her deposit as she was found to have made her bid under a misapprehension. This case, therefore, is not in point.

13. The second was *Fazil Meah v. Prosanna Kumar Roy*, A.I.R. (10) 1923 Cal. 316 : (68 I.C. 305). This was a single Judge case following an unreported decision of the same Court and it, no doubt, held that, under para 3 of the 'Conditions of Sale' in Form No. 29 of Appendix E, Code of Civil Procedure, the Court had a discretion to direct a re-sale of the property. With respect, I find it impossible to reconcile this view to the clear language of the said paragraph, which in terms confers a parallel jurisdiction on the Court and the officer conducting the sale to decline to accept the bid, and, therefore, naturally also to accept the bid.

14. The third was *Jaibahadar Jha v. Matukdhari Jha*, A.I.R. 1923 Pat. 626 : (2 Pat. 518). There also the sale had not been accepted by the Amin, the Munsif himself having undertaken to accept the bid, asking the Amin to 'close' the auction. The learned Judges pointed out:

“By his order ‘close’ he (Munsif) mere; meant the officer conducting the sale to stop the action and put up for the Court's signature the order knocking down the property and declaring the purchaser under O. 21, R. 84. The sale in his view would be completed only after the Court's signature was obtained.”

No one denies the power of the Court to accept the sale, where it has not already be accepted by the officer conducting the sale. This case also, therefore, is not in point.”

16. From the observation made by the Court, it is clear that there must be an order by the Court accepting the bid. Admittedly, here in this case there is no order accepting the bid of the petitioner, therefore, no right accrues in his favour unless the order not accepting the bid is held illegal. Indisputably, the order for not accepting the bid is not under challenge i.e. 08.02.2018. Thus, the order passed by the Court for re-auction can also not be held illegal.

17. In view of the above enunciation of law as held by the Allahabad High Court, it is clear that as per the provision of Order XXI Rule 69 and conditions contained in form No.29, the Court has discretion to direct re-sale. The Court has further observed, relying upon a decision of Patna High Court in **AIR 1923 Pat 525 (Jaibahadar Jha Vs. Matukdhari Jha)** that the sale was completed only after the Court's signature was obtained. Here in this case, it is clear that the proposal submitted before the Executing Court was not accepted by the

Court and therefore the sale cannot be considered to be concluded as per the requirement of Rule 82 of Order XXI.

18. The learned Senior counsel for the respondents has placed reliance on the decision of Madras High Court in case of **The Raja of Bobbili** (supra) saying it is the discretion of the Court to accept or not to accept the highest bid. Although learned counsel for the petitioner has contended that in the case of Madras High Court it is also observed by the Court that as per Section 6 of the Indian Contract Act, the lapse of time before acceptance of a proposal whether arising from the adjournment of the auction proceeding or otherwise is ground for presuming revocation only when it is unreasonably long. The learned counsel for the petitioner submitted that here in this case there was no reason assigned and thus, not accepting the bid of the petitioner cannot be held to be proper. But I am not convinced with the contention raised by the learned counsel for the petitioner for the reason that if we see the order dated 08.02.2018 it clearly reveals that the Executing Court has found that it would not be proper to accept the bid when the application/objection of the judgment-debtor is pending. Unfortunately the order dated 08.02.2018 is not under challenge and it is not contended by the learned counsel for the

petitioner that the said order of the Court is illegal and reason assigned therein was not sustainable.

19. The learned counsel for the petitioner has also placed reliance upon the judgment in the case of **Janak Raj** (supra) but in my opinion that judgment is not applicable in the facts and circumstances of the present case because the Supreme Court in the said case has dealt with the question “whether a sale of immovable property in execution of a money decree ought to be confirmed when it is found that the *ex parte* decree which was put into execution has been set aside subsequently.”. However, it is clear from the aforesaid discussion that here in this case the offer of the petitioner was not accepted by the Court and there was no question for concluding the sale and as such the aforesaid case and law laid down therein is not applicable.

20. Likewise in the case of **Rajendra Singh** (supra) the same situation arose as the Court was dealing with the question for setting aside the sale by the Court exercising the provision of Order XXI Rule 90. The Supreme Court in the said case in paragraph 17 has observed as under:-

“17. The other ground for setting aside the same is the inadequacy of the price. The respondents have not alleged any fraud or material irregularity in the conduct of the court’s auction-sale, whereby they suffered injustice. Mere inadequacy of the price is not a ground for

setting aside the court sale. That finding of the learned judge also is not sustainable in the law.”

21. However, as already made clear, in the present case the issue involved is whether re-auction ordered by the Court is proper or not and question for scrutinizing the reason for setting aside the sale by the Court is not involved, therefore, said aspect is not required to be considered and has no significance.

22. In view of the aforesaid discussion, the questions emerged for adjudication, are accordingly answered. The petition, therefore, is found without any substance, and the orders impugned passed by the Court for fresh auction cannot be said to be illegal as the same does not suffer from any material irregularity and can also not be said that while exercising the discretion, the Court has exceeded its jurisdiction as the said discretion is exercised by the Court judiciously.

23. In the result, the petition being without any substance, is hereby **dismissed**.

(Sanjay Dwivedi)
Judge