

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 9651 OF 2018**  
**(@ SPECIAL LEAVE PETITION (CIVIL) NO. 30323 OF 2014)**

**M/S BEE GEE CORPORATION PVT. LTD** **...APPELLANT(S)**  
**VERSUS**

**PUNJAB FINANCIAL CORPORATION & ANR.** **...RESPONDENT(S)**

**J U D G M E N T**

**R. BANUMATHI, J.**

1. Leave granted.

2. This appeal has been preferred against the order dated 24.02.2014 in EFA No. 536 of 1988 passed by the High court of Punjab and Haryana whereby the High Court confirmed the order of the Executing Court affirming the auction sale in favour of the first respondent-corporation.

3. The appellant-herein obtained loan from the first respondent-Corporation in 1966 and has not adhered to the terms and conditions of the loan in repayment and was declared as a defaulter. For the subsisting amount of loan, decree was passed. In execution of the decree, the appellant's property was sold on 16.12.1983 by the Court following the order of Executing Court in the Execution Petition.

4. We have heard Mr. A.K. Chopra, learned senior counsel

appearing for the appellant as well as Mr. T.S. Doabia, learned senior counsel appearing for respondent no. 1.

5. The appellant-herein challenges the Court auction sale held on 16.12.1983 which has been upheld by both the Executing Court as well as by the High Court. The contention of the appellant is that the Court auction sale is vitiated primarily on :-(i) on account of non-compliance of mandatory provisions of Order 21 Rule 85 CPC and (ii) that the same is further vitiated on account of non-publication of sale notification well in advance prior to the date of sale (16.12.1983).

6. Insofar as the first contention of non-compliance of Order 21 Rule 85 CPC is concerned, even at the outset, it is to be pointed out that the first respondent-corporation is not only an auction purchaser but also a decree holder. As per Order 21 Rule 72 CPC, the decree holder cannot bid to buy the property put to auction except by express permission of the Court. As per order 21 Rule 72(2) CPC, the amount of decree may be taken as payment to set off against one another. In this case, our attention has been drawn to the order of the Executing Court dated 03.12.1983 by which the Executing Court has granted permission to the first respondent-corporation under Order 21 Rule 72 CPC to participate in the bid. Thus the first respondent-financial corporation bid in the auction by virtue of the permission granted by the Court. In view of the provision to set off under Order 21 Rule 72(2) there was no requirement of depositing the sale proceeds of Rs. 12 lakhs or any part thereof in the Court.

7. Learned senior counsel appearing for the appellant contended that Order 21 Rule 85 CPC has not been properly complied with and the High Court failed to consider the objections so raised by the appellant. It was further submitted that adjustments not having been made and repayment of excess amount not done would nullify the entire sale and this has not been considered by the High Court. In support of his submission, learned senior counsel has placed reliance on judgments of this Court in the case of *Manilal Mohanlal Shah & Ors. vs. Sardar Sayed Ahmed Sayed Mahmad & Anr. reported in AIR 1954 SC 349*; *Balram Son of Bhasa Ram Vs. Ilam Singh & Ors. reported in 1996 (5) SCC 705* and *Trinath Harichandan & Ors. Vs. Chairman Paradeep Port Trust and Ors. reported in 1998 (3) SCC 113* and *Shilpa Shares and Securities and Ors. Vs. The National Cooperative Bank Ltd. and Ors. reported in 2007 (12) SCC 165*.

8. Order 21 Rule 85 mandates the deposit of the bid amount. As per proviso to Order 21 Rule 85 CPC an amount of bid, in which the decree holder is a purchaser, can be set-off. Since first respondent-corporation is not only the auction purchaser but also a decree holder as well, there is no question of deposit of the auction amount. Since there was no prospective buyer to offer bid on the occasion of the previous auction sale, the first respondent-corporation filed application on 03.12.1983 seeking permission under Order 21 Rule 72 CPC and also exemption from depositing 25% of the bid amount at the time of auction and remaining 75% later under Order 21 Rules 84 and 85 CPC

respectively. This application was allowed by the Executing Court on the same date i.e. 03.12.1983 and the same was not challenged. Both the Executing Court as well as the High Court have concurrently held that mandatory provisions of Order 21 Rule 85 CPC has been duly complied with. As pointed out earlier, the first respondent-corporation is not only an auction purchaser but also a decree holder entitled to the provisions of set off under Order 21 Rule 85 proviso, as noted above.

9. Insofar as the contention of the appellant that there was no prior publication done on 15.12.1983, learned senior counsel appearing for the first respondent-corporation has drawn our attention to the findings of the courts below that there was notification of warrant of sale dated 19.11.1983. Learned senior counsel appearing for the first respondent has submitted that from the evidence of K.R. Bhalla (DW-1) it is clearly brought on record that wide publication was given regarding the sale by publication in 'Daily Tribune' as well as other papers. That apart warrant of sale dated 19.11.1983 was affixed at the spot. Thus there was wide publication about the sale well prior to the date of auction. Though publication was done in the newspaper on 15.12.1983, since warrant of sale was affixed well in advance, we do not find any violation either in the proclamation of sale or in the advertisement of sale. Both the Courts below concurrently recorded that the provisions of Order 21 Rule 85 CPC and other mandatory provisions were duly complied with and we are not inclined to interfere with the concurrent findings of the Courts below.

10. The appeal is, accordingly, dismissed.

.....J.  
[R. BANUMATHI]

.....J.  
[INDIRA BANERJEE]

NEW DELHI  
18TH SEPTEMBER, 2018