

GAS POINT PETROLEUM INDIA LTD.

A

v.

RAJENDRA MAROTHI & ORS.

(Civil Appeal No. 619 of 2023)

FEBRUARY 10, 2023

B

[M. R. SHAH AND C.T. RAVIKUMAR, JJ.]

Code of Civil Procedure, 1908 – Order XXI, rules 64, 84, 85 and 86 – Execution proceedings – Decree passed in civil suit – Property of judgment debtor auctioned and sold on 03.11.2011 in favour of respondent No.1 for recovery of amount – Appellant filed objection before the Executing Court, contending, inter-alia, that the property was purchased by him from judgment debtor on 31.08.1999 and they were in possession of the same – Executing Court overruled the objections – Lower Appellate Court allowed appeal and remitted the matter back to the Executing Court – Writ petition – High Court set aside the order of lower Appellate Court observing that appellant failed to plead and establish the nature of irregularity or fraud committed in sale and therefore, no fault could be found in the order of the Executing Court – On appeal, held: As per Order XXI, rules 84 and 85, the auction purchaser has to deposit 25% of the sale amount immediately on being declared to be the purchaser and full amount of purchase-money is to be paid by the purchaser into the Court before the Court closes on fifteenth day from the sale of the property – In the present case, the purchaser-respondent No.1 did not deposit 25% of the amount as required under Order XXI, rule 84 immediately – Even the balance 75% of the amount was not deposited as required under Order XXI, rule 85 – Full amount of purchase-money in the present case was deposited on 04.11.2011 i.e., after the period prescribed /provided under Order XXI, rule 85 – Evidently, there was non-compliance of mandatory provisions of Order XXI, rules 84 and 85 and therefore, the sale was vitiated – Even otherwise, when the property in question was put to auction on 18.10.2011 the appellant had already purchased the said property as far as back on 31.08.1999 as there was no injunction with respect to the said property – When the property was put to auction, the judgment debtor was not the owner and therefore, the same could not have been put to auction – Under the

C

D

E

F

G

H

A *circumstances, the Executing Court erred in overruling the objections raised by the appellant – Order of the High Court, quashed – Order passed by lower Appellate Court, restored.*

Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed Mahmad and Anr; (1955) 1 SCR 108 and Rosali V. v. Taico Bank and Ors. (2009) 17 SCC 690 – relied on.

Case Law Reference

	(1955) 1 SCR 108	relied on	Para 8.1
C	(2009) 17 SCC 690	relied on	Para 8.2

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 619 of 2023.

From the Judgment and Order dated 29.04.2016 of the High Court of M.P. Principal Seat at Jabalpur in WP No.3342 of 2015.

D Ravindra Shrivastava, Sr. Adv., Arjun Garg, Shobhit Jain, Aakash Nandolia, Ms. Sagun Shrivastava, Advs. for the Appellant.

Sanjay K. Agrawal, Sarthak Nema, Ms. Ankita Khare, Ramsakha Kushwaha, Yashovardhan Jain, Ms. Sangeeta Singh, Advs. for the Respondents.

E The Judgment of the Court was delivered by

M. R. SHAH, J.

F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.04.2016 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur in W.P. No. 3342/2015, by which, the High Court has allowed the said writ petition preferred by respondent No. 1 herein and has set aside the order passed by the lower Appellate Court and has restored the order passed by the Executing Court with respect to the property in question, the original respondent No. 1— objector before the Executing Court has preferred the present appeal.

G 2. The facts leading to the present appeal in a nutshell are as under: -

H 2.1 There was a dispute between National Ginni Enterprises and Smt. Gayatri Agrawal with respect to the L.P.G. gas agreement. A civil suit No. 07-A/98 was filed by the said Smt. Gayatri Agrawal against the National Ginni Enterprises. The learned Trial Court passed a decree by

directing the judgment debtor (National Ginni Enterprises) to provide L.P.G. gas as per the conditions of the agreement. The decree provided that if the defendants are unable to implement the said order, in alternatively it was directed that the plaintiff was entitled to get the amount of Rs. 2,38,450/- + Rs. 23,500/- (sic) relating to cost of the gas cylinders and regulators respectively. The judgment debtor did not fulfill the first portion of the order and did not supply the gas cylinders and regulators. Therefore, the decree holder filed the execution petition before the Executing Court. It was decided to sell the property of the judgment debtor. Accordingly, a declaration was made and property was auctioned and sold on 03.11.2011 in favour of respondent No. 1 herein. The appellant herein – original respondent No. 1 filed objection before the Executing Court, contending, *inter-alia*, that the property was purchased by him from judgment debtor on 31.08.1999 and that they are in possession of the said land. An application under Order 21 Rule 90 r/w 151 of the CPC was filed. The learned Executing Court overruled the objections and rejected the application under Order 21 Rule 90 by order dated 23.01.2013. The appellant filed miscellaneous civil appeal before the Court of Additional District Judge, Damoh being Misc. Civil Appeal No. 12/2013. The lower Appellate Court allowed the said appeal and set aside the order of Executing Court dated 23.01.2013 and remitted the matter back to the Executing Court to rehear the parties and after taking into account all the facts and circumstances, pass a fresh order in accordance with law. The order passed by the lower Appellate Court was the subject matter before the High Court by way of present writ petition. By the impugned judgment and order the High Court has allowed the said writ petition and has set aside the order passed by the lower Appellate Court by observing that the appellant herein – original respondent No. 1 has failed to plead and establish the nature of irregularity or fraud committed in sale and therefore, no fault can be found in the order of the Executing Court.

2.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court, the original respondent No. 1 has preferred the present appeal.

3. Shri Ravindra Shrivastava, learned Senior Advocate has appeared on behalf of the appellant and Shri Sanjay K. Agrawal, learned counsel has appeared on behalf of respondent No. 1.

4. Shri Ravindra Shrivastava, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and

- A circumstances of the case the High Court has committed a serious error in allowing the writ petition and quashing and setting aside the well-reasoned order passed by the lower Appellate Court.

4.1 It is submitted that in the present case there was breach of Order 21 Rule 64 and Order 21 Rule 84/85 of CPC and therefore, due to non-compliance of the aforesaid provisions the sale has been vitiated.

- B 4.2 It is submitted that in the present case the property in question was put to auction on 18.10.2011 and therefore, the auction purchaser was required to deposit 25% of sale amount immediately. It is submitted that in the present case the auction purchaser deposited 25% of the amount on 03.11.2011. It is submitted that therefore there is a non-compliance of Order 21 Rule 84 of CPC. It is further submitted that the balance sale consideration (75%) was required to be deposited by the auction purchaser within a period of fifteen (15) days from the date of auction. It is submitted that in the present case balance 75% of the sale consideration was deposited by the auction purchaser on 04.11.2011.
- C It is submitted that therefore there is also a violation of Order 21 Rule 85 of CPC. Relying upon Order 21 Rules 64, 84, 85 and 86 and relying upon the decisions of this Court in the cases of **Manilal Mohanlal Shah and Ors. Vs. Sardar Sayed Ahmed Sayed Mahmud and Anr.; (1955) 1 SCR 108** and **Rosali V. Vs. Taico Bank and Ors.; (2009) 17 SCC 690**, it is prayed to allow the present appeal.

- E 4.3 It is further submitted by learned Senior Advocate appearing on behalf of the appellant that even otherwise the High Court has not properly appreciated the fact that the property in question was purchased by the appellant on 31.08.1999 from the judgment debtor and at that time the property in question was not the subject matter of civil suit. It is submitted that civil suit was filed for specific performance of the L.P.G. gas agreement. It is submitted that even injunction dated 18.05.1999 was not the subject matter of property in question. It is submitted that when the property in question was put to auction by the Executing Court on 18.10.2011/03.11.2011 much prior thereto the appellant purchased the property on 31.08.1999. It is submitted that therefore at the time
- G when the property was auctioned the judgment debtor was not the owner of the property in question, which as such was purchased by the appellant by the registered sale deed on 31.08.1999. It is submitted that therefore the High Court has committed a very serious error in observing that the appellant purchased the property despite the injunction granted by the Trial Court on 18.05.1999 and that the appellant cannot be permitted to

H

raise the objection as the appellant has purchased the property despite the injunction. A

4.4 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

5. Present appeal is vehemently opposed by Shri Sanjay Agrawal, learned counsel appearing on behalf of respondent No. 1 herein – auction purchaser. B

5.1 It is submitted by learned counsel appearing on behalf of respondent No. 1 that in the facts and circumstances of the case no error has been committed by the High Court in restoring the order passed by the learned Executing Court and overruling the objections raised by the appellant herein – objector. C

5.2 It is submitted that on true interpretation of Order 21 Rule 90 the High Court has rightly refused to set aside the sale on the alleged violation of Order 21 Rule 64 and Order 21 Rule 84/85. It is submitted that the appellant purchased the property in question during the pendency of the suit and the injunction dated 18.05.1999 was in operation. It is submitted that therefore the appellant shall not be entitled to raise any objection thereafter and pray to set aside the sale on the ground that the property in question was purchased by it. It is submitted that therefore, the High Court has rightly observed that since, in the civil suit a temporary injunction was granted by the Trial Court on 18.05.1999 and by that time the property was not purchased by the appellant herein there was no question of putting the appellant to notice. D E

5.3 It is further submitted that even the alleged non-compliance of Order 21 Rule 64, Order 21 Rule 84 and 85 were not raised before the Executing Court and therefore, the High Court has rightly observed that the same cannot be permitted to be raised subsequently. F

5.4 Making the above submissions it is prayed to dismiss the present appeal.

6. We have heard learned counsel appearing on behalf of the respective parties at length.

7. While appreciating the submissions on behalf of the respective parties the chronological dates and events are required to be considered which are as under: - G

7.1 In the year 1998, the decree holder filed a suit for specific performance of the L.P.G. gas agreement;

H

- A 7.2 The civil suit was not with respect to the property in question. An interim injunction application was filed by the original plaintiff. It was apprehended that the defendants were trying to leave Damoh after selling and transferring their firm, namely, National Gini Enterprises, to any other person. The application was filed under Order 38 CPC as well as for permanent injunction. By order dated 18.05.1999 the learned Trial Court directed to maintain status quo. The learned Trial Court also directed that if the defendants transfer their firm Ginni Enterprises to any other person then they would not transfer the same against the interest of the plaintiff. That thereafter the decree came to be passed on 30.09.1999 directing the defendants – judgment debtor – Ginni Enterprises to supply LPG gas and in the alternative to pay 2,38,450/- + Rs. 23,500/- (sic). As the decree was not executed the decree holder filed the execution proceeding. In the execution proceeding the property in question was put to auction for recovery of Rs. 2,38,450/- + Rs. 23,500/- (sic). The property was put to auction on 18.10.2011. The auction purchaser – respondent No. 1 herein deposited 25% of the amount on 03.11.2011 and deposited balance 75% of the amount on 04.11.2011. In light of above factual scenario, submissions on behalf of the respective parties, more particularly, submission on behalf of the appellant on non-compliance of Order 21 Rules 64, 84 and 85 are required to be considered.
- E 7.3 While considering the issue involved in the present appeal with respect to non-compliance of the relevant provisions of CPC, the relevant provisions of the CPC are required to be referred to, namely, Order 21 Rules 64, 84, 85 and 86, which read as under: -

“Order 21 – Execution of Decrees and Orders

- F **Rule 64. Power to order property attached to be sold and proceeds to be paid to person entitled.**—Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.
- G **Rule 84. Deposit by purchaser and re-sale on default.**—(1) 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
- H

the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold. A

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under Rule 72, the Court may dispense with the requirements of this rule.

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 closes on the fifteenth day from the sale of the property: B

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72. C

Rule 86. Procedure in default of payment.—In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.” D

7.4 As per Order 21 Rule 84, on every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration deposit of twenty-five per cent on the amount of his purchase-money and in default of such deposit, the property shall forthwith be re- sold. E

7.5 As per Order 21 Rule 85, the full amount of purchase- money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property. Thus, as per the aforesaid provisions, the purchaser has to deposit 25% of the sale amount immediately on declaring to be the purchaser and the full amount of the purchase-money shall have to be paid by the purchaser into the Court before the Court closes on fifteenth day from the sale of the property. F

7.6 In the present case admittedly the purchaser – respondent No. 1 deposited 25% of the amount on 03.11.2011 and did not deposit 25% of the amount as required under Order 21 Rule 84 immediately. The auction purchaser was required to deposit 25% of the amount the day on which he was declared purchaser i.e., 18.10.2011. Even the balance 75% of the amount has not been deposited as required under Order 21 Rule 85. The full amount of the purchase-money in the present case has been deposited on 04.11.2011 i.e., after the period prescribed/ H

A provided under Order 21 Rule 85. Therefore, there is non-compliance of Order 21 Rule 84 and Rule 85 of CPC.

8. In light of the aforesaid facts, few decisions of this Court on Order 21 Rules 84 and 85 are required to be referred to and considered.

B 8.1 In the case of **Manilal Mohanlal Shah (supra)**, it is observed and held that the provision regarding the deposit of 25% of the amount by the purchaser other than the decree-holder is mandatory and the full amount of the purchase money must be paid within fifteen days from the date of the sale. It is further observed and held that 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. In paragraph 8 of the decision, it is observed and held as under: -

D “8. 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 provision 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 claim to the property.... (Rule 86).”

E 8.2 The decision of this Court in the case of **Manilal Mohanlal Shah (supra)** fell for consideration before this Court in the subsequent decision in the case of **Rosali V. (supra)**. In the said decision this Court interpreted the word “immediately” in Order 21 Rule 84. In the said decision, this Court considered paragraph 11 of the decision in the case of **Manilal Mohanlal Shah (supra)** in paragraph 20 as under: -

F “20. What would be the meaning of the term “immediately” came up for consideration before this Court, as noticed hereinbefore, in Manilal Mohanlal Shah [AIR 1954 SC 349] wherein it was held : (AIR pp. 351-52, para 11)

G “11. 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 per cent of the purchase money immediately, on the person being

H

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 rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When 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 exist in the eye of the law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.”

8.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is evident that there is non-compliance of mandatory provisions of Order 21 Rule 84 and Order 21 Rule 85 and therefore, the sale was vitiated.

9. Even otherwise, it is required to be noted that the appellant herein purchased the property in question much before the auction of the property i.e., 31.08.1999. At the relevant time the property in question was not the subject matter of suit. As observed hereinabove, the subject matter of suit was specific performance of the L.P.G. gas agreement and even the ad-interim injunction dated 18.05.1999 was also against the transfer of firm Ginni Enterprises to any other person and the defendants were directed to maintain status quo with respect to their firm Ginni Enterprises. Therefore, at the time when the property in question was put to auction on 18.10.2011 the appellant had already purchased the said property as far as back on 31.08.1999 as there was no injunction with respect to the said property while ad-interim injunction dated 18.05.1999 and as observed hereinabove, the property in question was not the subject matter of suit and the decree came to be passed on 30.09.1999 and the property was put to auction in the year 2011 for recovery of sum of Rs. 2,38,450/- + Rs. 23,500/- (sic). The ad- interim injunction dated 18.05.1999 cannot be pressed into service against the appellant. Therefore, the High Court has committed an error in considering injunction dated 18.05.1999 against the appellant. Therefore, at the time

A when the property was put to auction on 18.10.2011, the judgment debtor was not the owner and therefore, the same could not have been put to auction. Under the circumstances, learned Executing Court erred in overruling the objections raised by the appellant against the auction/sale of the property which the appellant purchased much prior to the date of the auction i.e., on 31.08.1999.

B 10. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court deserves to be quashed and set aside and is accordingly quashed and set aside and consequently the order passed by the Executing Court overruling the objections raised by the appellant also deserves to be quashed and set aside and is quashed and set aside. The order passed by the lower Appellate Court is hereby restored. It will be open for respondent No. 1 to get back the amount deposited by him, lying with the Executing Court. Present appeal is accordingly allowed. In the facts and circumstance of the case there shall be no order as to costs.

Bibhuti Bhushan Bose
(Assisted by : Abhishek Pratap Singh, LCRA)

Appeal allowed.