Ebadullah Khan vs Municipal Board And Anr. on 14 February, 1950

Equivalent citations: AIR1950ALL450, AIR 1950 ALLAHABAD 450

ORDER

Mushtaq Ahmad, J.

1. This is an application praying that I should recall by review my order dated 24th January 1949, allowing the revision filed by the opposite party. I have already mentioned the facts of the case in that order and they need not be repeated here.

2. The main point argued by Mr. Walter Dutt then appearing for the auction-purchaser-opposite party, was that, in the absence of an application by the judgment-debtor under Order 21 Rule 90, Civil P. C., the learned Munsif had no jurisdiction to set aside the sale. For the reasons given in the said order, I accepted this contention. The only point then argued by Mr. Gopalji Mehrotra, counsel for the judgment-debtor, was that the auction-purchaser had no right of appeal against the order of the Munsif to the learned Additional Civil Judge. No other point was argued either by the one or the other counsel, and none other is mentioned in that order. It is not suggested by the counsel for the judgment-debtor, now seeking review, that any other point was then actually argued.

3. The present applicant, namely, the judgment-debtor, now applying for review, is represented to press this application by Mr. G.S. Pathak. He has argued a new point, viz. that the mere fact that the Amin had accepted the highest bid made by the auction-purchaser did not conclude the sale, which would have been completed only after an order in that behalf had been passed by the learned Munsif, and that no such order having admittedly beets passed, there was no 'sale,' for the cancellation of which there could be any question of applying under Order 21, Rule 90, Civil P. C. He has also contended that the Munsif having issued general instructions to the Amins that, in case there was a disparity between the value of the property mentioned in the sale proclamation and the amount of the highest bid, they should not conclude the sale, the Amin in the present case also had no such power. He urged that my order, now sought to be reviewed, ignored these aspects. and that the same constituted an error 'apparent on the face of the record' within the meaning of Order 47 (1), Civil P. C. The position, therefore, is that fresh points by a fresh counsel have now been raised, and it is desired that, in view of these, I should set aside my order of 24th January 1949 and dismiss the revision filed by the auction-purchaser.

4. It has been frankly conceded that the mere fact that a point was not argued in the original case and is raised for the first time in an application for review would be no ground for review, unless an 'error apparent on the face of the record' id held to have been committed.

5. I propose to consider the points now raised under two general heads -- (1) whether there was any error in my order aforesaid at all, and (2) whether, in case there was, it was 'apparent on the face of the record.'

6. To take the first question first, it would be useful to refer to Rules 65 and 84 of Order 21 and also to para. 3 of the 'conditions of sale' in Form 29, Appendix E, Civil P. C. Under Rule 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 84 (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 per cent. 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 unmistakeably 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 Rule 84 (1) of Order 21, Civil P.C. 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 para-graph as well as in Rule 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 armed, 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/highest 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. (18) 1931 Lah. 78 : (131 I. C. 227) and Hoshnak Ram v. Punjab National Bank Ltd., A. I. R. (23) 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 hut 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 Rule 84 (1) of Order 21, Civil P. C. 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. Chettiar Firm, A.I.R. (16) 1929 Rang. 311 (7 Rang. 495) and Lokman Chhabilal v. Motilal Tulshi Ram, A. I. R. (26) 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 Rule 84 (1) of Order 21, Civil P. C., 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. (17) 1930 Lah. 41 : (118 I. C. 900); Mt. Khairan v. Alliance Bank Simla Ltd., A. I. R. (6) 1919 Lah. 309 : (50 I. C. 914) and Mannu Lal v. Nanhe Lal, A.I.R. (20) 1933 Nag. 123: (29 N. L. R. 52) may also be cited.

11. Learned counsel for the applicant invited my attention to a number of cases in support of 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, Civil P. C., 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. (10) 1923 Fat. 525 : (2 Fat. 548). 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) merely meant the officer conducting the sale to stop the auction and put up for the Court's signature the order knocking down the property and declaring the purchaser under Order 21, Rule 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.

15. The fourth was Surendra Mohan v. Manmathnath, A. I. R. (18) 1931 Cal. 583 : (58 Cal. 788). This case merely followed the case in Fazil Meah v. Prosanna Kumar, A.I.R. (10) 1923 Cal. 316; (68 I. C. 305), already quoted, and there also the Nazir had placed a report before the Sub-ordinate Judge for accepting certain bids. That is to say, the officer had not accepted any one of the bids himself.

16. All the cases just referred to and relied upon by the learned counsel for the applicant were, therefore, distinguishable, and they did not affect the interpretation put on the relevant provisions of the Code in the various cases I had previously cited.

17. I must, therefore, hold that there was no error in my order dated 24th January 1919 on the point now raised on behalf of the applicant.

18. It cannot be denied, and, indeed, it was admitted that a mere error, even if there was one in the order sought to be reviewed, is no valid ground for review. If authority was needed on the point, I may refer to Chhajju Ram v. Neki A. I. R. (9) 1922 P. C. 112 : (3 Lah, 127) ; Balknshna v. Mt. Bundia, A. I. R. (20) 1933 ALL. 274 : (55 ALL. 196) and Ranbir Prasad v. Sheobaran Singh, A.I.R. (26) 1939 ALL. 619, (186 I. C. 885). It is, therefore, necessary to find whether the error emphasised on behalf of the applicant was one 'apparent on the face of the record' within the meaning of Order 47 (1), Civil P. C.

19. Learned counsel urged that the error in the present case was of that class, as the law was settled that only the Court and not the Amin could accept the highest bid and conclude the sale in favour of the highest bidder, and also because the sale in the present case was contrary to the standing instructions of the learned Munsif. On the first point, I have already shown that the law is certainly not as stressed by the learned counsel, there being clear decisions on the point against the applicant and the rulings relied on his behalf being all cases in which the Amin had not exercised his power of accepting the highest bid. Indeed, in my opinion, nothing is clearer on the point than the language itself of Rule 84 (1) of 0. 21 and Para. 3 of the 'conditions of sale' in Form 29 of Appendix E of the Code. As regards the second point of the effect of the Munsif's standing order not to accept the highest bid, if there was a disparity between the same and the value of the property entered in the

sale-proclamation, I would only say that the Munsif had no jurisdiction to take away the discretion which had been conferred on the Amin by the Code itself, both having concurrent powers in the matter under Para. 3 of the said 'conditions of sale.' If the Amin in this case had acted against the Munsif's instructions, being fully aware of the same, he might have made himself answerable departmentally, but not so as to affect the statutory right of the auction-purchaser, whose bid had been actually accepted by the Amin in the exercise of powers conferred on him by the law. I may incidentally mention here, as I did in my order in the revision, that the value of the house entered in the sale proclamation was Rs. 1500 and the amount bid by the opposite party was Rs. 1200.

20. It may be advantageous briefly to notice the interpretation judicially put on the words 'apparent on the face of the record' by various Courts. In Ranbir Prasad v. Sheo Baran Singh, A. I. R. (26) 1939 ALL. 619:(186 I. C. 885); Girdhari Lal v. Kapadvanj Municipality, A. I. R. (17) 1930 Bom. 317 : (128 I. C. 19); P.V.S. Sundram v. Madangopal, A. I. R. (28) 1941 Rang. 233 : (1941 Rang. L. R. 382) and Mt. Majid-un-nissa v. Sheikh Anwarullah, A. I. R. (39) 1942 oudh 210: (18 Luck. 48), it was held that the mere fact that a different view of law on the point raised than that expressed in the order sought to be reviewed was possible would not justify a prayer for review. It was no doubt argued by the learned counsel for the applicant that this rule of the possibility of a different view not justifying review would not apply in the present case, as I had not in my last order expressed any view at all on the point now raised by him. The answer to this is two-fold. Firstly a new point to obtain a review is not permissible at all, and secondly, on account of the point not having been raised, and a certain position having consequently been assumed, the Court must be taken to have impliedly held that the assumption embraced a correct legal position as otherwise, the judgment might have been different.

21. In Dayanand Badrinarain v. Lachmidas Gopalji, A. I. R. (26) 1938 Nag. 41: (I. L. R. (1937) Nag. 392); Ram Khelawan Singh v. Moni Lal, A. I. R. (26) 1939 Pat. 678: (19 Pat. 169 P. B.) and Juli Meah v. Atardin, A. I. R. (22) 1936 Rang. 32: (13 Rang. 220), it was held that no review can be allowed on a new point. I am tempted to quote the following observations on this point of a Bench of the Nagpnr. High Court in Laxman Anandrao v. Ram Chandra, A.I.R. (26) 1938 Nag. 145 : (I. L. R. (1938) Nag 151) :

> "The view that review lies if the Judge overlooks the opposite law is wrong. A Judge is supposed to know the law. There is only one correct view of the law, though there ma; be man; opinions as to what that view is. A Judge is assisted in arriving at the correct opinion by the arguments of counsel. Whether counsel is helpful or not, whether a Judge has in mind or not a particular point, the Judge is supposed to have it in mind. If he makes a mistake, his judgment proceeds on 'an incorrect exposition of law.' It makes no difference whether that mistake Is due to an inadvertence, forgetfulness, ignorance, or other error, unless that mistake or error is apparent on the face of the record, that is, amounts to an error which can be disclosed without referring to any thing beyond the record."

22. A very useful test is furnished by the rule that, where the point from its nature is of a debatable nature, i.e., where it cannot be de finitely asserted that this is the right view and no other, no case for review has been made out. This was held in Ghulam Shah v. Khan Chand Gopaldas, A. I. R. (26)

1939 Sind 137 : (I. L. R. (1989) Kar. 330) ; Liaquat Husain v. Mohammad Razi, A. I. R. (31) 1944 Oudh 198. (217 I. C. 132); Tinnevelly Mills Co. Ltd. v. T.A.K. Mohideen, A. I. R. (16) 1929 Mad. 209 : (117 I. C. 712) and Krishna Chand v. Makund, Swarup, A. I. R. (25) 1938 ALL. 308 : (175 I. C. 586).

23. Learned counsel for the applicant cited a number of cases in support of his contention that a 'serious' error of law was one 'apparent on the face of the record.' These were Theo Lararus v. P.M. De Souza & Co., A. I. R. (20) 1933 Rang. 85 : (146 I. C. 946), in which the error was found to be obvious and patent, Krishna v. Ganapaye Upadya, A. I. R. (2) 1915 Mad. 1068 : (28 I. C. 586), in which the previous order was held to be erroneous as being contrary to a binding ruling of the High Court, this merely giving a discretion to the Court to review that order, and Natesa Naicker v. Sambanda Chettiar, A. I. R. (28) 1941 Mad. 918: (2 M. L. J. 390), in which the Court was found to have gone wrong by not knowing the legal position established by a well known authority. I have already shown that, if the point now raised is at all settled, it is in the way contended for by the opposite party and not as suggested by the applicant. These rulings, therefore, will also have no application.

24. I may also note in passing that the present application was not sought to be covered by the words 'any other sufficient cause' in Order 47 (1) of the Code. Indeed, such a position could not be taken, as it is well, settled that these words are ejusdem generis, having reference to grounds analogous to those previously mentioned in the rule.

25. I, therefore, hold that, in the first place, the applicant is not entitled to raise any new point to obtain a review of my last order, in the second place, the order contains no error on any point at all, and thirdly, assuming it was erroneous, the error is not 'apparent on the face of the record' so as to justify an application under Order 47 (1) of the Code.

26. Learned counsel foe the opposite party contended that the present application having been made by one Mr. Coleston as an agent of the applicant and not by the latter, the application is not maintainable. This gentleman was allowed to engage counsel in the original case, and there is nothing in my order of 24th January 1949 suggesting any such objection to his right to represent the applicant at the stage when the revision was either filed or argued before me. I cannot, therefore, accept this contention which has reference, in fact, to a subsequent proceeding in the same case.

27. In the result, I dismiss this application with costs.