

## **L. Shri Chand vs Hira Lal And Anr. on 12 January, 1955**

**Equivalent citations: AIR1955ALL704, AIR 1955 ALLAHABAD 704**

### **JUDGMENT**

1. This is a judgment-debtor's appeal. In execution of decree of Rs. 31,106/15/ against the appellant the sale of the appellant's property took place first on 15-12-1953. The auction price was Rs. 31,500/- and the last bid was of the decree-holder. This sale was however set aside. A second time the same property was put up for sale on the 15th of March, 1954, and this time the decree-holder's bid was Rs. 30,500/-.

This was the highest bid. But this sale was also set aside. A third time the property was sold on 14-5-1954 and the bid of the decree-holder was of Rs. 25,000/- only which was the highest. The Amin did not accept it and reported the matter to the Judge. On 9-7-1954, the decree-holder agreed to bid Rs. 31,500/- the amount which he had bid at the time of the auction held on 15-12-1953.

The difference in the decretal amount and the bid, about Rs. 400/-, had been deposited by the decree-holder in time when the property was sold on 15-12-1953. As the amount deposited by him was in deposit, he was not required to make any further deposit when the sale was concluded in his favour on 9-7-1954. The sale was challenged on the ground of material irregularity in conducting and publishing it.

The objections to the sale were rejected and a first appeal from the order rejecting the objections has been filed in this Court by the judgment-debtor which is pending.

Another appeal which is headed as execution first appeal has now been filed by the judgment-debtor against the order confirming the sale on a fresh ground which had not been raised in the court below in the proceedings under Order 21, Rule 89, C. P. C. This ground is that the decree-holder did not deposit the balance of the amount due from him after deducting the amount of decree from the sale price.

This ground is frivolous as the decree-holder had already deposited the amount in the previous sale which amount was still held by the execution court. It was not necessary for him to first withdraw the amount from court and then to re-deposit it. This would have been futile. Law does not contemplate futile or unnecessary proceedings. A little common sense would have shown that it was wholly unnecessary.

2. There is no force in this appeal. It is accordingly dismissed under Order 41, Rule 11, C. P. C.