

Gulab Singh Vs. liird Additional District Judge and ors.

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Court : Allahabad

Decided On : Oct-31-2002

Reported in : 2003(3)AWC2215

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 82

Appeal No. : C.M.W.P. No. 42918 of 1997

Appellant : Gulab Singh

Respondent : liird Additional District Judge and ors.

Advocate for Def. : Shatrughan Singh, Adv. and ;R.K. Tiwari, S.C.

Advocate for Pet/Ap. : R.N. Sharma, ;A.C. Verma, ;Achal Singh Vats and ;H.M. Srivastava, Advs.

Disposition : Writ petition dismissed

Judgement :

ORDER

Anjanl Kumar, J.

1. Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India filed by Gulab Singh, judgment debtor aggrieved by the execution of decree passed in Original Suit No. 30 of 1983, which was decreed by Civil Judge, Fatehpur, vide its order dated 21.11.1985. Thereafter judgment debtor, present petitioner preferred a regular appeal against the said judgment and decree passed by Civil Judge, Fatehpur. The said appeal was dismissed by lower appellate court and the decree was confirmed. The decree holder thereafter preferred execution of the decree, which has been registered as Execution Case No. 4 of 1988 for recovery of the decretal amount against the judgment debtor. The immovable property of the Judgment debtor relating to Gata No. 348 was attached on 18.2.1988 by Civil Judge, Fatehpur and the same was put to public auction, which was conducted in presence of the judgment debtor on 15.2.1993. The highest bid in the aforesaid auction was that of Smt. Gomti Devi who deposited one fourth of the bid money immediately after the auction sale, on the spot. The auction conducted on 15.2.1993, was confirmed by Civil Judge, Fatehpur, on 9.7.1993 and the entire money was deposited by Smt. Gomti Devi. No objection whatsoever was filed by the judgment debtor. It is this now the present application has been filed. The execution court as well as lower appellate court has recorded a finding that the judgment debtor has not complied with the provisions of Order XXI Rule 82, Code of Civil Procedure nor did he deposit the money as contemplated under the aforesaid Order XXI and no objection whatsoever has been filed to the auction. In these circumstances, this application cannot be allowed.

3. The aforesaid finding was affirmed by the revisional court and the revision was dismissed.

4. In view of the findings recorded by the execution court and affirmed by the revisional court, this Court under Article 226 of the Constitution of India will not interfere with the findings of the courts below. There is yet another reason for dismissing the writ petition that the judgment debtor could have filed an objection under Order XXI Rule 82, Code of Civil Procedure but he did not file the same.

5. In view of what has been stated above, the writ petition lacks merit and is, accordingly, dismissed. The interim order, if any, stands vacated. However, the

parties shall bear their own costs.

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