

Ashutosh Chatterjee Vs. Sudhinadra Chandra Moulik and ors.

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SooperKanoon Citation : sooperkanoon.com/880259

Court : Kolkata

Decided On : Dec-01-1911

Reported in : 13Ind.Cas.597

Judge : Lawrence Jenkins, C.J. and ;N. Chatterjea, J.

Appellant : Ashutosh Chatterjee

Respondent : Sudhinadra Chandra Moulik and ors.

Judgement :

Lawrence Jenkins, C.J.

1. This is an application which has for its substantial purpose the setting aside of a sale in execution which was effected under the following circumstances. On the 10th of July 1911, the property was put up for sale in execution, and there was a bid of Rs. 9,000 by the petitioner. At the time when he made that bid, it was the highest, and the result was that the Nazir who was conducting the sale treated him as the highest bidder. Immediately afterwards, those interested in the sale discovered what had been done. They at once raised an objection, because it was believed that there were others who were willing to bid no less than Rs. 15,000 for the property. Accordingly, the Judge was approached, with the result that on the very same day he directed that the sale should proceed and that the next bid above Rs. 9,000 should be Rs. 15,000. I am not much concerned with the actual form of his order. Substantially, he considered that there ought to be a

continuation of the sale for the purpose of seeing whether, as had been represented to him, there were people willing to give Rs. 15,000. The Rs. 15,000 was bid, and on the basis of that bid the opposite party on the present application was declared to be the purchaser. It is to the re-opening, as it has been called, of the sale and to the opposite party being declared to be the purchaser that the petitioner objects, and it is with a view to setting aside those transactions that this Rule has been obtained in the form in which it is issued.

2. The application to us is under Section 115 of the Code of Civil Procedure, which not only limits our jurisdiction but vests us with complete discretion and we have to consider really whether this is a case in which we ought to interfere in the interests of justice. In my opinion, we should not. I am satisfied on the affidavit that it is the practice in the Court of Naddia for the Court ultimately to approve of the highest bid. It is suggested that there is no warrant in the terms of Order XXI for such a procedure. But I am by no means sure that there is not sufficient warrant for it in the third of the conditions of sale, which are adopted as a part of the proclamation of sale. I think the words of the third condition are such as to explain how the procedure is that which has been adopted in this case.

3. I think, therefore, that, as a matter of substance, the learned Judge considered that he was exercising the discretion vested in him under the general procedure of the Court, based possibly on the third condition, and that, in view of all the circumstances of the case, it would be inappropriate for us to interfere. We must, therefore, discharge the Rule with costs, hearing fee, three gold mohurs.

N. Chatterjea, J.

4. I agree.