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SETH BANARASI DASS (DEAD) BY LRS.

v.

THE DISTRICT MAGISTRATE AND COLLECTOR,
MEERUT AND ORS.

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FEBRUARY 8, 1996

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

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Civil Procedure Code, 1908—Section 47—Auction sale—Objection relating to execution, discharge or satisfaction of claim—To be determined by officer in charge of execution before proceeding with execution by way of sale—Proceeding with auction sale without adjudication upon objections—Material irregularity—Vitiates sales.

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The appellant was the lessee of a Sugar Mill. In respect of sugarcane cess, purchase tax and other Government dues of the Mills, the Collector issued a recovery certificate against the appellant in his personal capacity. The appellant being the owner of some equity shares and preference shares, several attempts were made to sell those shares by public auction. Thereafter, a citation was issued by the Tehsildar on the appellant u/s 280

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of the U.P. Zamindari Abolition and Land Reforms Act, 1950, calling upon him to pay a sum of Rs. 50, 42,523 failing which his property would be attached and sold. The objections raised by the appellant stating that the shares for which notice of auction was given were already pledged with a Bank and the amount mentioned in the recovery certificate of the Collector

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was not outstanding, were left undecided by the Collector and/or sale officer. Subsequently, a sale proclamation was issued by the sale officer and pursuant to this an auction sale was held when shares held by the appellant were auctioned. The objections filed to the auction sale were allowed and the auction sale was declared invalid and therefore set aside by the District Magistrate. The auction purchasers filed Writ Petition

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challenging the order of the District Magistrate. The Collector issued a notice to the appellant as well as the auction purchasers to hear the parties again. The appellant filed a writ petition to restrain the Collector from reviewing or recalling his order. Both these writ petitions were disposed of by a common judgment. The High Court upheld the validity of the auction

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sale. These appeals were filed against the judgment of the High Court.

The appellant contended that the auction sale was invalid because the auction purchasers did not deposit the full purchase price on the date of the auction sale and that objections raised by him to the proposed auction sale when the shares were attached and these objections which go to the root of the liability of the appellant to pay the amount were pending when the auction sale took place.

Allowing the appeals, this Court

HELD : 1.1. In the instant case, the auction purchasers had deposited the purchase price as directed by the officer holding the sale and had also been issued a receipt for the same. The auction sale therefore, could not be faulted on the ground that the auction purchasers did not deposit the full purchase price on the date of the auction sale. [273-B]

1.2. An auction which is held without deciding objections to it is bad in law. Recovery proceedings are equivalent to execution proceedings under the Civil Procedure Code. The objections to the attachment and sale of the said shares were raised by the debtor. Under Section 47 of the Civil Procedure Code, all questions arising between the parties relating to execution, discharge or satisfaction of the claim were required to be determined by the officer in charge of execution before proceeding with execution by way of sale. The first respondent has given no explanation for not deciding these objections earlier. Therefore, the High Court was not right in observing that the objections could be decided at a latter date even after the sale of the shares to which the objections pertained. Proceeding with the auction sale without adjudicating upon the objections is a material irregularity which vitiates the sales. The appellant had thereby lost his valuable right to have his objections adjudicated upon in accordance with law. The objections were raised much prior to the auction sale and they ought to have been decided before the auction sale took place. Failure to do so vitiated the sale. [273-D-E; H; 274-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1644-1645 of 1980.

From the Judgment and Order dated 8.5.78 of the Allahabad High Court in C.Misc. W.P. Nos. 879 and 4973 of 1974.

G.L. Sanghi, S.K. Dholakia, Hari Shanker, Rohit Tandon, Uma

- A Datta, K.K. Jain, Ms. Aysha Khatri, Pramod Dayal, S.K. gupta, Arvind Minocha, Manoj Goel, Ms. Abha R Sharma, Adv. for the appearing parties.

The Judgment of the Court was delivered :

- B **MRS. SUJATA V. MANOHAR, J.** The original appellant Seth Banarasi Dass was the lessee of S.B. Sugar Mills, Bijnor in the State of Uttar Pradesh. In respect of sugarcane cess, purchase tax and other Government dues of S.B. Sugar Mills, Bijnor, the Collector, Bijnor issued a recovery certificate for Rs. 61,48,674.21 against the appellant in his personal capacity. The appellant was the owner of 94,320 equity shares of the face value of Rs. 10 each and 2,260 preference shares of the face value of Rs. 100 each in M/s. Jaswant Sugar Mills Ltd., Meerut. The Company Secretary of M/s Jaswant Sugar Mills received a prohibitory order dated 21.12.1970 restraining him from permitting any transfer of 94,320 equity shares and 2,260 preference shares held by the appellant in the said company. The Company Secretary, by his letter dated 6th of February, 1971 addressed to the Collector, informed him that on the date of the receipt of the prohibitory order, that is to say, on 14th of January, 1971 only 25,150 equity shares and 2,260 preference shares stood in the name of the appellant. He further informed the Collector by the said letter that these shares had been received by them from Oriental Bank of Commerce Ltd., Meerut Cantonment for transfer in their name, and that these shares were already pledged with the said bank. Copies of the letters received by M/s. Jaswant Sugar Mills from the Oriental Bank of Commerce Ltd. were also enclosed with the said letter.

- F Thereafter, on 31.7.1972 a citation was issued by the Tehsildar, Meerut on the appellant under Section 280 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 calling upon him to pay a sum of Rs. 50,42,523 failing which his property, *inter alia*, would be attached and sold. Thereafter, the appellant filed his objections dated 8.11.1972 before the Sale Officer raising various objections to the amount claimed and also pointing out that the shares for which notice of auction was given were already pledged with the Oriental Bank of Commerce Ltd., Meerut and the Punjab Co-operative Bank, New Delhi. Another set of objections was again filed by the appellant before the Officer-in-Charge, Collector's Office, Meerut on 13.8.1973. These objections, *inter alia*, stated that the
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amount of Rs. 61,48,674.21 mentioned in the recovery certificate of the Collector of Bijnor was not outstanding; that a sum of Rs. 49,67,101.25 had already been realised by the Collector, Bijnor through the Punjab National Bank, Bijnor and a revised recovery certificate was also issued. He claimed that full recovery had been effected by then. He also reiterated his objections to the sale of the said shares. None of these objections were decided by the Collector and/or Sale Officer. In the meanwhile, several attempts had been made to sell the said shares by public auction. None of these attempts, however, succeeded as nobody came forward to buy these shares.

On 24.11.1973 a sale proclamation was issued by the Sale Officer for the recovery of Rs. 61,48,674.21, fixing 2nd of January, 1974 as the date of the auction sale. Pursuant to this proclamation, an auction sale was held on 2nd of January, 1974 when 94,320 equity share of the face value of Rs. 10 each and 2,260 preference shares of the face value of Rs. 100 each in M/s Jaswant Sugar Mills Ltd. held by the appellant were auctioned for Rs. 2,90,000. The highest bid of Rs. 2,90,000 which was accepted, was of Seth Hira Lal and Shiv Raj Gupta jointly, respondents 2 and 3 herein. Out of the total auction amount, a sum of Rs. 75,000 was deposited by the auction purchasers with the Tehsildar, Meerut on the date of the auction. On 5th of January, 1974 the auction purchasers wrote a letter to the Sale Officer asking where they should deposit the balance amount. As per the directions of the Sale Officer the auction purchasers deposited the balance amount of Rs. 2,15,000 with the Tehsildar, Meerut on 7th of January, 1974.

On 11th of January, 1974 the appellant filed objections to the auction sale before the Collector Meerut. On 14th of January, 1974 the Oriental Bank of Commerce also filed objections to the auction sale before the Collector, Meerut. On 16th of January, 1974, the District Magistrate, Meerut, passed an order declaring the auction sale as invalid and setting aside the same. Thereupon, the auction purchasers filed Writ Petition No. 879 of 1974 before the High Court of Allahabad challenging the order of the District Magistrate dated 16th of January, 1974. The Collector, in the meanwhile, apparently having realised the mistake committed by him, issued a notice to the appellant as well as to the auction purchasers to appear before him on 13th of March, 1974. Thereafter, the Collector heard the parties on various dates in August, 1974. Before he could pass final orders, however, the appellant filed a writ petition being Writ Petition No. 4963 of 1974 before the High Court of Allahabad, *inter alia*, to restrain the

- A Collector from reviewing or recalling his order dated 16th of January, 1974. An interim order to that effect was issued by the High Court. Both these petitions were heard together and disposed of by a common judgment. The High Court has upheld the validity of the auction sale held on 2nd of January, 1974. The present appeals are from the judgment and order of the High Court in these two writ petitions.

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The first contention of the appellant is to the effect that the auction sale is invalid because the auction purchasers did not deposit the full purchase price on the date of the auction sale. The auction sale was held under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Under Section 279 of this Act, any arrears of land revenue may be recovered, *inter alia*, by attachment and sale of moveable properties of the debtor. Under Section 282, every attachment and sale of moveable property shall be made according to the law in force for the time being for the attachment and sale of moveable property in execution of a decree of a civil court. Under Section 341, unless otherwise expressly provided, the provisions, *inter alia*, of the Code of Civil Procedure, 1908 shall apply to the proceedings under this Act. It is not in dispute that the attachment and sale of the appellant's shares had to be in accordance with the provisions of the Civil Procedure Code. Order XXI Rule 77 provides for sale of moveable property by public auction. It provides :

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"(1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be resold.

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2. On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same. and the sale shall become absolute."

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Therefore, the officer conducting the sale has the power to grant time to pay the price. In the absence of such facility being given, the auction purchaser must pay the full price at the time of the sale, otherwise the property is liable to be resold. Respondents 2 and 3 have produced the order of the Sale Officer dated 2nd of January, 1974 where he has directed respondents 2 and 3 to deposit one-fourth of the sale price, approximately, in the treasury forthwith. This clearly implies that he has given time to the

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purchasers to pay the balance amount. Respondents 2 and 3 accordingly

deposited Rs. 75,000 on 2nd January, 1974. On 5th of January, 1974, the Sub-Divisional Officer/Sale Officer directed the auction purchasers to deposit the remaining amount in the treasury, 6th of January, 1974 was a Sunday. On 7th of January, 1974 the auction purchasers deposited the balance amount of sale price in the sub-treasury of the Tehsil Meerut and a receipt was issued to them by the Sub-Divisional Officer/Sale Officer. Therefore, the auction purchasers have deposited the purchase price as directed by the officer holding the sale and have also been issued a receipt for the same. The auction sale, therefore, cannot be faulted on this ground.

The second objection of the appellant, however, deserves to be accepted. It is contended by him that two sets of objections were raised by him to the proposed auction sale when the shares were attached. These objections to the sale were pending when the auction sale took place. These objections go to the root of the liability of the appellant to pay the amounts under the recovery certificate as well as to the saleability of the shares proposed to be sold. These objections ought to have been adjudicated upon before the auction sale. An auction which is held without deciding objections to it is bad in law. Recovery proceedings are equivalent to execution proceedings under the Civil Procedure Code. The objections to the attachment and sale of the said shares were raised by the debtor. Under Section 47 of the Civil Procedure Code, all questions arising between the parties relating to execution, discharge or satisfaction of the claim were required to be determined by the officer in charge of execution before proceeding with execution by way of sale. The objections, for example, related to the amount which is claimed in the recovery certificate. According to the appellant the amount mentioned in the recovery certificate was not correct because subsequent citation was for a different amount. The appellant had also claimed repayment of various amounts. It was also pointed out by the appellant that the shares were already pledged with the Oriental Bank of Commerce. Yet no notice was given to the Oriental Bank of Commerce and the shares were purported to be sold ignoring the pledge of the shares in favour of the Oriental Bank of Commerce. We need not examine the merits of the objections raised by the appellant. But it is important to notice that these objections were not decided prior to the holding of the auction sale. The first respondent has given no explanation for not deciding these objections earlier. In our view the High Court was not right in observing that the objections could be decided at a later date even after the sale of the shares to which the objections pertained. Proceeding with the auction

A sale without adjudicating upon the objections is a material irregularity which vitiates the sale. The appellant has thereby lost his valuable right to have his objections adjudicated upon in accordance with law. The objections were raised much prior to the auction sale and they ought to have been decided before the auction sale took place. Failure to do so vitiated the sale.

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The appellant has also contended that on 3.7.1971 Ordinance No. 23 of 1971 known as the U.P. Sugar Undertakings (Acquisition) Ordinance, 1971 was issued. As a result, S.B. Sugar Mills was acquired and the appointed date for vesting of the undertaking was 2nd of July, 1971. This Ordinance was replaced by U.P. Act No. 23 of 1971. The appellant contends that in view of the provisions of the said Ordinance and the said Act, namely, the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971, the debts and encumbrances attached to the undertaking are liable to be adjusted against the compensation determined in accordance with Section 7 of the said Act. Reliance is placed on the first proviso to Section 3 of this Act in this connection. It is the contention of the appellant that the total compensation payable would be much larger than the revenue dues of the undertaking in respect of which the shares of the appellant were purported to be sold by public auction. Hence there was no necessity for a auction sale. This contention is raised for the first time before us. It was not raised before the High Court. Nor is there any factual data in the records before us which would go to show the quantum of compensation to which S.B. Sugar Mills would be entitled under the said Act. We, therefore, decline to examine this submission which is raised before us for the first time.

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However, in view of our findings above, the appeals are allowed and the auction sale held on 2nd of January, 1974 is set aside. Respondents 2 and 3 will be at liberty to withdraw the purchase price deposited by them which, we are informed, is invested in fixed deposits together with accrued interest thereon. In the circumstances, there will be no order as to costs.

R.A.

Appeal allowed.