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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th July, 2026
Pronounced on: 25th August, 2026

\# **CNR No: DLHC010231862026**

\+ EX.F.A. 42/2026, CM APPL. 35054/2026, CM APPL. 40320/2026 & CM APPL. 44550/2026

RADHEY SHYAM PAHWA .....Appellant

Through: Mr. Ravi Kapoor, Mr. Rishav Ambastha, Mr. Rishabh Tiwari, Mr. Abhishek Singh and Mr. Manish Dewan, Advocates.

versus

UNIVERSAL POLYCHEM (INDIA) PVT. LTD. & ORS. .....Respondents

Through: Mr. Jeevesh Nagrath, Senior Advocate with Mr. Rishi K. Awasthi, Mr. Amit V. Awasthi, Mr. Piyush Vatsa and Mr. Rahul Raj Mishra, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under Order XXI Rule 58 of the Code of Civil Procedure, 1908[1], seeks the following prayers: -

> "A. Pass an Order and set aside the Impugned Order dated 05.05.2026 passed by the Ld. Execution Court in Execution Case No. 3281/2024;

[1] **CPC**

B. Pass an Order and declare that the Appellant, Sh. Radhey Shyam Pahwa, as the highest bidder and successful purchaser of the property bearing No. J - 60, First Floor, Lajpat Nagar - III, New Delhi, in terms of Condition 4 of the Proclamation of Sale dated 21.03.2025;

C. Pass an Order and direct issuance of the Sale Certificate in respect of the property bearing No. J - 60, First Floor, Lajpat Nagar - III, New Delhi in favor of the Appellant;

IN THE ALTERNATIVE

D. Pass an Order and set aside the auction proceedings dated 06.05.2025 in their entirety on account of material irregularities including the failure to conduct a mandatory re-auction, all actions in furtherance thereof (including issuance of Sale Certificate, if any) and direct a fresh auction to be conducted;

E. Pass any such further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The Appellant has assailed the order dated 05.05.2026[2] passed by the learned District Judge-03, South-East District, Saket Courts, New Delhi[3], in Execution No. 3281/2024[4], whereby objections raised by the Appellant and Mr. Sanjay Arora, *i.e.*, Respondent No. 3 against the report of the learned Court Auctioneer with respect to the auction conducted on 06.05.2025 for sale of J-60, First Floor, Lajpat Nagar-III, New Delhi-110024[5], *i.e.*, immovable property of the Judgment Debtor-MP Telelinks Ltd. were dismissed.

3. The present appeal arises out of an auction conducted by the learned Executing Court in execution proceedings initiated by the decree holder, *i.e.*,

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[2] **Impugned Order**
[3] **Executing Court**
[4] **Execution Petition/Execution Proceedings**
[5] **Subject Property**

Respondent No.1, for satisfying the judgment and decree dated 18.02.2017 passed by the learned ADJ-02, North District, Rohini Courts, Delhi. Pursuant to the attachment of the subject property, the learned Executing Court directed its sale by public auction *vide* order dated 21.03.2025, and fixed its reserve price at Rs.1,70,00,000/-. The learned Executing Court further settled the terms of the sale by way of Proclamation of Sale dated 21.03.2025 and appointed a Court Auctioneer for conducting the auction.

4. The auction was held on 06.05.2025, and the Appellant along with Respondents No. 1 to 5 had participated in the same. Upon conclusion of the auction, the Court Auctioneer had submitted her report before the learned Executing Court. In the said report, it was stated that the bidding was to proceed in increments of Rs.10,00,000/-; however, upon the bid reaching Rs.2,50,00,000/-, some of the bidders insisted that the bid size be reduced to Rs.1,00,000/-. The said request was not acceded to by the Court Auctioneer; however, in order to maintain a peaceful atmosphere, the bids offered by the participants were duly noted by the Court Auctioneer. During the course of auction, Respondent No.2 emerged as the highest bidder with a bid of Rs.2,60,00,000/- which was made at 12:59 PM. Immediately thereafter, the Appellant offered Rs.2,61,00,000/-, which was countered by Respondent No.2 with a bid of Rs.2,62,00,000/-. Both of the said bids, however, were not accepted by the Court Auctioneer on the ground that they were not in accordance with the conditions of the sale, and the auction had concluded at 01:00 PM. Consequently, Respondent No.2's bid, being in accordance with the conditions of sale, was declared as the highest by the Court Auctioneer.

5. Immediately thereafter on the date of auction, a cheque of Rs. 65,00,000/- (25% of Rs. 2,60,00,000/-) was drawn by Respondent No. 2 in the name of District Judge-03, South-East District, Saket Court Complex, New Delhi, and the same was duly accepted from him. It was further stated in the Court Auctioneer's report that upon insistence of the Appellant, and in order to maintain a peaceful atmosphere, a cheque of Rs. 65,25,000/- (25% of Rs. 2,61,00,000/-) was taken from the Appellant. The Appellant subsequently deposited his entire bid amount, however, Respondent No. 2 failed to deposit the entire bid amount within the stipulated period of time.

6. Subsequently, the Appellant and Respondent No. 3 filed their objections under Order XXI Rule 90 CPC before the learned Executing Court, alleging material irregularities, arbitrariness and collusion in the conduct of the auction proceedings. *Vide* the impugned order dated 05.05.2026, the learned Executing Court dismissed the objections preferred by the Appellant and Respondent No. 3 and declared Respondent No.2 to be the successful purchaser of the subject property. Aggrieved thereby, the Appellant has preferred the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. At the outset, learned counsel appearing on behalf of the Appellant submitted that there were material irregularity and fraud in the auction process and subsequent events, culminating in confirmation of sale in favour of Respondent No. 2. It was further submitted that the entire auction process was vitiated on account of failure of the Court Auctioneer to act with fairness, probity and transparency.

8. Learned counsel for the Appellant submitted that the time period provided under Order XXI Rule 84 and 85 CPC, for depositing 25% and 75% of the bid amount, ought to have been reckoned from the date of auction, when the highest bidder was identified. The said provisions are reproduced as under: -

> "**84. Deposit by purchaser and re-sale on default**.—(1) 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.
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> (2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.
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> **85. Time for payment in full of purchase money.—**The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:
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> Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72."

9. It was further submitted that Order XXI Rule 84 CPC mandates that at the time of every sale, the person declared as purchaser, shall pay 25% of the purchase money forthwith, and Rule 85 of the said Order mandates that the full amount of purchase money payable, shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property. It was submitted that the term "purchase" and "sale" ought to be understood, neither in the context of sale in terms of Section 54 of the Transfer of Property Act, evidenced by registration of sale deed, nor in the context of confirmation of sale under Order XXI Rule 92 of the CPC.

10. It was submitted that the time period for effecting deposit of 25% of the bid amount and 75% balance amount, ought to have been reckoned from the date when at the auction, there is identification of the highest bidder. It was further submitted that the highest bidder in law, automatically becomes the purchaser of the property and there is no necessity of a formal declaration. Reliance was placed by the learned counsel for the Appellant on the judgment passed by the Hon'ble Supreme Court in **Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmad**[6], to contend that provisions of Order XXI Rule 84 and 85 CPC are mandatory in nature, and the payment of 25% of the purchase money ought to have been made immediately upon being declared as purchaser and the balance within 15 days thereof.

11. Further, reliance was placed by the learned counsel for the Appellant upon judgments passed by the Hon'ble Supreme Court and High Courts, wherein auction process was set aside and declared as nullity in the event of non-compliance of the mandatory timeline as stipulated under Order XXI Rules 84 and 85 of CPC. The said judgments are as under: -

i. **Gas Point Petroleum India limited v. Rajendra Marothi & Ors**[7], Paragraphs 26-31;

ii. **Sanjay Bhimrao Patil v. Shriram City Union Finance Ltd**.[8], Paragraphs 4C, 4D & 4E;

iii. **Nand Lal v. Mt. Siddiquan**[9], Paragraphs 1, 2, 6, 12-21;

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[6] **(1954) 1 SCC 724**
[7] **(2023) 6 SCC 391**
[8] **2024 SCC OnLine Bom 5619**
[9] **1957 SCC OnLine All 269**

iv. **Varghese v. Jewel Rock Hire Purchase Kuries (P) Limited**[10], Paragraphs 7 & 8.

12. Learned counsel for the Appellant further placed reliance upon the judgment passed by the learned Division Bench of the Hon'ble Bombay High Court in **Sunil Seth v. Niranjan D. Woody**[11], and particularly on the following paragraphs: -

> "6. The date of sale obviously referred to in Clause, (e) is nothing but date of auction. The word "sale" has been losely used by the Rule makers in Clauses (e) and (h) for the date of auction. This is fortified by the fact that in Clause (f), it is provided that the sale shall be held after the expiry of not less than 30 days calculated from the date on which notice of the proclamation was affixed in the office of the Recovery Officer. The expression "at the time of the purchase" in Clause (g) also means 'at the time of the sale'. The expression "at the time of the purchase" seems to have been used in the context of sale in Cause (g) on the deposit of 15 per cent of the price of the immovable property by the purchaser. The expression "at the time of the purchase" means at the time of sale i.e. at the time of auction which is further fortified by the fact that if 15 per cent of the price of the immovable property is not deposited by the purchaser at the time of the auction, the Sale Officer has to proceed for re-sale of the property forthwith. The aspect of confirmation of sale only arises after 100 per cent of the price of the immovable property has been deposited by the purchaser; 15 per cent of the price at the time the highest bid is knocked down in auction and 85 per cent within 15 days from the date of knocking down the bid in the auction. The expression "confirmation of sale" cannot be imported in Clauses (g) and (h) of sub-rule (11), as canvassed by the senior counsel for the appellants.
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> 7. In the present case, admittedly, the date of auction was 14.11.2005. It is not in dispute that the appellants failed to deposit 15% of the price of the immovable property at the time of purchase i.e. when the highest bid was knocked down in favour of the appellants. He also did not deposit

[10] **2018 SCC OnLine Ker 1728**
[11] **2006 SCC OnLine Bom 874**

the remainder of the purchase price i.e. 85 per cent of the purchase price within 15 days from 14.11.2005."

In view of the above, it was submitted that the obligation to deposit the balance purchase money starts from the date on which the highest bid is accepted in the auction, and not from the date of confirmation of sale. It was further submitted that confirmation of sale is only a subsequent step, after compliance with the mandatory requirement of deposit of the purchase money.

13. Learned counsel for the Appellant further submitted that in **Sunil Seth (*Supra*)**, the Hon'ble Bombay High Court had upheld the judgment passed by the learned Single Judge of the Hon'ble Bombay High Court in **Niranjan D. Woody v. South Indian Co-operative 14 Bank Ltd.**[12], which dealt with *para materia* provisions to Order XXI Rule 84 and 85 CPC. The relevant portion of the said judgment reads as follows: -

> "11. Counsel appearing on behalf of the first respondent submits that the expression that is used in Cl. (g) is "at the time of the purchase" while the expression in. Cl. (h), is "from" the "date of sale." An attempt was made on behalf of the first respondent to submit that the requirement that 15% of the price of the immovable property be paid at the time of purchase means that the deposit has to be made when the conveyance is executed. Hence, it was urged that the requirement of paying of the remaining balance within fifteen days from the date of sale must mean within fifteen days from the date of the execution of the conveyance. The submission cannot be accepted for the reason that it is in the teeth of the plain and grammatical meaning of the language of the Rules. The Rules require firstly a payment of 15% of the price at the 'time of purchase' and secondly, the payment of the balance within fifteen days from the 'date of the sale.' The expression "time of purchase" and the expression

[12] **2006 SCC OnLine Bom 1628**

"date of sale" cannot mean to two different events. The time of purchase and the date of sale are but facets of the same transaction. Under the Rules, the sale is to be conducted by a public auction. The Sale Officer is undoubtedly entitled to decline to accept the highest bid when it is unduly low or for adequate reasons. The auction can be adjourned on the date on which it is fixed. However, once the auction takes place and the highest bid is accepted, the consequence thereof is to knock down the sale in favour of the highest bidder. It is at that time that the highest bidder must make a payment equivalent to 15% of the total price of the immovable property. The time of purchase under Cl. (g) is the time when the bid is accepted. The payment of the remainder within fifteen days must be with reference to that date.

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13. The provisions of Rules 84, 85 and 86 of O. 21 came up for consideration before the Supreme Court in Manilal Mohanlal Shah v. Sardar Saved Ahmed Sayed Mahammad, AIR 1954 SC 349. To recapitulate, O. 21, R. 84 requires on every sale of immovable property the person who is declared to be the purchaser to deposit 25% of the amount of the purchase money, immediately after such declaration. The full amount of purchase money is to be paid before the close of the fifteenth day from the sale of the property under O. 21, R. 85. In default, Rule 86 provides that the deposit may, after defraying the expenses of the sale, be forfeited to Government and the property shall be resold. In Manilal an application was filed under O. 21, R. 90, inter alia, on the ground that the payment not having been effected within the period prescribed by Rules 84 and 85, the sale became void and was a nullity. The Court before which the application was filed held that the application under R. 90 was barred by limitation, but the sale being void and not being a mere irregularity, the Court was bound to resell the property irrespective of any application being made by the judgment-debtor. The Supreme Court considered whether the failure to make the deposit under Rr. 84 and 85 was only a material irregularity in the sale which could only be set aside under R. 90 of O. 21 or whether it was wholly void. The submission was that the application under O. 21, R. 90 was barred by limitation and a mere failure to make the deposit under Rr. 84 and 85 is only a material irregularity. It was also argued before the Supreme Court that the Court having once allowed the set off and condoned the failure to deposit, the mistake of the Court should not be allowed to prejudice the purchasers who would certainly have deposited

the purchase price but for the mistake. The Supreme Court held that both the contentions were "devoid of substance."

(Para 6 at page 350).

3. The judgment of the Supreme Court in para 6 reads as follows:

"The principal question which falls to be considered is whether the failure to make the deposit under O. 21, Rr. 84 and 85 is only a material irregularity in the sale which can only be set aside under R. 90 or whether it is wholly void. It is argued that the case falls within the former category and the application under R. 90 being barred by limitation, the sale cannot be set aside. It is also contended that the Court having once allowed the set off and condoned the failure to deposit, the mistake of the Court should not be allowed to prejudice the purpose.

The Supreme Court held as follows:

"The provision regarding the deposit of 25 per cent, by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchasemoney must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set off. The provision for payment is, however, mandatory. (Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claims to the property………(Rule 86). Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent, of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent, of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question, of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.

chasers who would certainly have deposited the purhcase price but for the mistake. We are of the opinion that both the contentions are devoid of substance. In order to resolve this controversy a reference to the relevant rules of O. 21 of the CPC will be necessary. These Rules are 72, 84, 85 and 86:"

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18. Counsel appearing on behalf of the first respondent, however, sought to distinguish the judgments of the Supreme Court by adverting to the difference in the language used by the Legislature in Rr. 84, 85 and 86 of O. 21 of the Civil Procedure Code, 1908 as contradistinguished from the terminology used in Cls. (g) and (h) of R. 107(11) of the Maharashtra Co-operative Societies Rules, 1961. The two provisions have been juxtaposed together for the purpose of comparison. In my view, the differences in terminology are superficial. In any event, for the reasons now indicated, those differences would not justify a departure from the law laid down by the Supreme Court while construing analogous statutory provisions. Rule 84 mandates a deposit of 25% on every sale of immovable property by the person declared to be the purchaser immediately after such declaration. Rule 107(11)(g) requires a deposit of a sum of money equal to 15 % of the price at the time of purchase. The words, "at the time of purchase" in the case of an auction must mean the samething as the words "on every sale of immovable property" that are used in R. 84(1). "At the time of purchase" must necessarily mean at the time when the auctionpurchaser is informed of the acceptance of his bid. As in the case of R. 84(1), R. 107(11)(g) provides that in default of such deposit, the property shall forthwith be resold. Similarly, in so far as R. 107(11)(h) is concerned, the remainder has to be paid within fifteen days from the date of sale. Rule 85 of O. 21, similarly provides that the full amount of the purchase money has to be paid before the fifteenth day of the sale of the property. The consequences of default are provided in similar terms both in R. 107(11)(i) of the Maharashtra Co-operative Societies Rules, 1961 and in R. 86 of O. 21. Both sets of provisions — the provisions of O. 21 being statutory and those of R. 107 being subordinate legislation — emphasise the fundamental principle that the mandate of deposit within the period stipulated has to be complied with

strictly. In the absence of compliance with the mandatory requirement, the sale itself is no sale in the eyes of law. In default of compliance, the sale is rendered a nullity."

14. Learned counsel for the Appellant further contended that the aforesaid interpretation is also supported by Clauses 4 and 6 of the Proclamation of Sale, which read as under: -

> "4. The highest bidder shall be declared to be purchaser of the property, provided, always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court, or the Court Auctioneer conducting 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.
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> 6. The person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% on the amount of his purchase-money to the Court Auctioneer conducting the sale, and in default of such deposit the property shall forthwith be put-up again and re-sold."

15. Learned counsel for the Appellant further drew attention of this Court to Order XXI Rule 92(1) and Rule 94 of the CPC. The said provisions are reproduced as under: -

> "**92. Sale when to become absolute or be set aside.—**(1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:
> [Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.]
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> **94. Certificate to purchaser.—**Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute."

It was submitted that Order XXI Rule 92(1) of the CPC proceeds on the premise that a sale has already taken place and merely empowers the learned Executing Court to confirm such a sale, subject to adjudication of any application made under Order XXI Rules 89, 90 or 91 CPC. Similarly, Rule 94 contemplates issuance of a sale certificate in favour of the person who, at the time of the sale, is declared to be the purchaser. It was, therefore, submitted that a conjoint reading of Rules 84, 85, 92 and 94 of Order XXI CPC demonstrates that compliance with the mandatory requirements under Rules 84 and 85, pertaining to deposit of the purchase money, is a condition precedent for confirmation of sale under Rule 92. It was further submitted that since Rules 84 and 85 precede Rule 92 in the Act, the deposit of the purchase money is required to be completed before the stage of confirmation of sale is reached, and in the absence of such compliance, the learned Executing Court could not have confirmed the sale in favour of the auction purchaser.

16. Learned counsel for the Appellant further submitted that the scheme of Order XXI CPC itself indicates that the expressions "sale" and "sold" have been consistently used with reference to the auction proceedings, and not in the context of a sale as envisaged under Section 54 of the Transfer of Property Act or confirmation of sale under Order XXI Rule 92 of the CPC. In support of the aforesaid submission, reliance was placed upon various provisions under the headings "Adjudication of Claims and Objections" and "Sale of

Immovable Property", including Rules 65, 66, 68, 69, 72A and 82 of Order XXI CPC, to contend that the Legislature has consciously employed the said expressions while referring to the auction process, thereby indicating that the sale takes place upon the identification of the highest bidder, and not upon its subsequent confirmation by the learned Executing Court.

17. Learned counsel for the Appellant further drew attention of this Court to the Court Auctioneer's Report and particularly to the following portion: -

> "8. That thus as per the auction conducted by the undersigned the highest bid was received for an amount of Rs.2,60,00,000/- (Two Crores and Sixty Lacs only) by Sh. Lokesh Mendiratta which was in accordance with the terms laid at the time auction process was commenced. A cheque having number 000383 drawn on Kotak Mahindra Bank, Lajpat Nagar, for Rs. 65,00,000/- (25% of the highest bid amount) in the name of "District Judge-03 South-East District Saket Court Complex, New Delhi" was accepted from Sh. Lokesh Mendiratta (Highest bidder/H 1) and the same is annexed herewith as ANNEXURE-D.
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> xxx xxx xxx
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> 11. That thus as per the auction proceedings conducted by the undersigned the highest bid submitted was for Rs.2,60,00,000/- (Two Crores and Sixty Lacs only) as per the lot size of Rs. 10,00,000/- (Ten lac only), which was by one Sh. Lokesh Mendiratta."

In view of the above, learned counsel for the Appellant submitted that Respondent No. 2 had emerged as the highest bidder in the auction conducted on 06.05.2025, as recorded by the Court Auctioneer's report, as well as by the learned Executing Court in orders dated 28.11.2025 and 05.05.2026. It was further submitted that in terms of Condition No. 4 of the Proclamation of Sale, Respondent No. 2 became the purchaser upon being declared the highest bidder. Consequently, the period prescribed under Order XXI Rule 85 of the

CPC and Condition No. 6 of the Proclamation of Sale for deposit of the balance 75% of the bid amount commenced from the date of auction. It was further submitted that Respondent No. 2 failed to deposit the balance sale consideration within the prescribed period. On the other hand, the Appellant deposited the entire bid amount in respect of his bid, as recorded in the order dated 22.05.2025, and also complied with the subsequent directions issued by the learned Executing Court.

18. Learned counsel for the Appellant further submitted that learned counsel appearing on behalf of Respondent No. 2 had, before the learned Executing Court on 22.05.2025, sought withdrawal of the bid submitted by Respondent No. 2, along with release of the cheque amount deposited by him. It was further submitted that the aforesaid contention of the Appellant was recorded by the learned Executing Court in paragraph 15 of the impugned order; however, no finding thereon had been returned. It was further contended that once Respondent No. 2 had sought withdrawal of his bid, he could not, in law, subsequently seek confirmation of the sale in his favour.

19. Learned counsel for the Appellant drew attention of this Court to the order dated 04.08.2025 passed by the learned Executing Court, and the relevant portion of the same reads as under: -

> "2. The Bidders, Lokesh Mendiratta and Radhey Shyam Pahwa shall also deposit the DD for the bid amount in the name of the Court within 07 days from today, failing which, their bid shall be liable to be rejected."

In view of the above, learned counsel for the Appellant had argued that even assuming the mandatory provisions of Order XXI Rules 84 and 85 of the

CPC were not attracted, Respondent No. 2 had failed to comply with the specific directions issued by the learned Executing Court *vide* orders dated 04.08.2025, 28.11.2025 and 11.02.2026, requiring him to deposit the balance bid amount. It was submitted that the order dated 04.08.2025 specifically provided that failure to deposit the demand draft for the bid amount within the stipulated period would render the bid liable to be rejected. It was further submitted that despite the aforesaid directions, Respondent No. 2 failed to deposit the balance bid amount.

20. It was further submitted that instead of complying with the aforesaid directions, Respondent No. 2 filed an application dated 10.04.2026 seeking extension of time on the ground of financial hardship, which came to be dismissed by the learned Executing Court *vide* order dated 11.04.2026. It was, therefore, contended that the conduct of Respondent No. 2 in failing to comply with the directions of the learned Executing Court disentitled him from seeking confirmation of the sale in his favour, and consequently, his bid ought to have been rejected.

21. Learned counsel for the Appellant further placed reliance upon the judgment passed by the Hon'ble Supreme Court in **U. Nilan v. Kannayyan**[13], and particularly on the following paragraphs: -

> "**26.** In a case which was ultimately decided by the Privy Council, the question arose as to when the sale shall be deemed to have become absolute: either on and from the date on which it was confirmed or on and from the date on which the appeal, filed against an order rejecting application for setting aside the sale, was disposed of. The Privy Council

[13] **(1999) 8 SCC 511**

in *Chandra Mani Saha* v. *Anarjan Bibi* [AIR 1934 PC 134 : ILR 61 Cal 945] held as under:

> "[I]n construing the meaning of the words 'when the sale becomes absolute' in Article 180, Limitation Act, regard must be had not only to the provisions of Order 21 Rule 92(1) of the Schedule to the Civil Procedure Code, but also to the other material sections and orders of the Code, including those which relate to appeals from orders made under Order 21 Rule 92(1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180, Limitation Act, until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above-mentioned application.
> Their Lordships, therefore, are of opinion that on the facts of this case the sales did not become absolute within the meaning of Article 180, Limitation Act, until 17th March 1927, and that the applications for possession of the properties purchased at the auction-sales were not barred by the Limitation Act."

27. The Privy Council confirmed the view taken by the Calcutta High Court in *Chhogan Lal Bagri* v. *Behari Lal Saha Ray* [AIR 1933 Cal 311 : 56 Cal LJ 520] and overruled the earlier judgment of that Court in *Neckbar Sahai* v. *Prakash Chandra Nag Choudhari* [AIR 1930 Cal 86 : ILR 56 Cal 608] . The effect of the Privy Council decision is that the sale of property, in execution of decree, does not become absolute merely on the passing of an order confirming the sale under Order 21 Rule 92 but if there has been an appeal against an order rejecting an application for setting aside the sale, made either under Order 21 Rule 89 or Rule 90 or Rule 91, the sale would not become absolute till the disposal of that appeal. It was held that the limitation of three years prescribed under Article 180 of the Limitation Act, 1908 for making an application for delivery of possession under Order 21 Rule 95 would run, not from the date on which the sale is confirmed under Order 21 Rule 92 but from the date on which the appeals are disposed of.

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31. The entire legal position was reviewed by this Court in *Maganlal* v. *Jaiswal Industries* [(1989) 4 SCC 344 : (1989) 3 SCR 696] and it was held that the sale does not become absolute or

> irrevocable merely on passing an order confirming the sale under Order 21 Rule 92 but it would attain finality on the disposal of the appeal, if any, filed against an order refusing to set aside the sale."

In view of the above, it was submitted that confirmation of sale under Order XXI Rule 92 of CPC, by itself, does not render the sale absolute. It was further submitted that where proceedings challenging the sale, including an appeal arising out of an order rejecting an application under Order XXI Rules 89, 90 or 91 of the CPC, remain pending, the sale cannot be treated as absolute, till the final adjudication of such proceedings.

22. Learned counsel for the Appellant had further relied upon the following judgments to contend that the time limit of 15 days to deposit the full amount of purchase money payable by the auction purchaser, as provided under Order XXI Rule 85 of CPC cannot be extended: -

i. **Balram v. Ilam Singh**[14]

ii. **United commercial Bank v. Mani Ram**[15]

iii. **Dasarla Koteswaramma v. Alla Venkayamma**[16],

23. Reliance was further placed upon the judgment passed by the Hon'ble Supreme Court in **Rajiv Kumar Jindal v. BCI Staff Welfare Assn**.[17], to contend that the object of an auction is to secure optimum realizable value of the property, and that the auction process should be conducted in a fair and transparent manner, so as to secure the highest possible price for the property.

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[14] **(1996) 5 SCC 705**
[15] **2002 SCC OnLine HP 39**
[16] **2009 SCC OnLine AP 419**
[17] **2023 INSC 439**

24. Learned counsel for the Appellant further placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Shalimar Cinema v. Bhasin Film Corpn.**[18], to contend that the Court is required to exercise due care and caution in conducting a Court auction and is under an obligation to ensure that the requirements governing the auction process are duly complied with. It was submitted that the Court and its officers are required to act fairly and diligently and that the auction process cannot be conducted in a casual or indifferent manner, particularly where valuable property is involved. Relevant portion of the said judgment is reproduced as under: -

> "**3.** In the view that we propose to take on the second question, we do not consider it necessary to express our view on the first question. But we do wish to say that the court has a duty to see that the requirements of Order 21 Rule 66 are properly complied with. In the words of the Judicial Committee, "In sales under the direction of the court, it is incumbent on the court to be scrupulous in the extreme". Though it may not be necessary for the court to make a valuation and enter it in the sale proclamation in every case, it is desirable at least in cases of sale of valuable property that the court make its valuation and enter it in the sale proclamation. We think it necessary to add that no action of the court or its officers should be such as to give rise to the criticism that it was done in an indifferent or casual way. We are constrained to make these observations because it was found by the learned Single Judge in the present case that there actually was no application under Order 21 Rule 66 and that the sale proclamation was prepared in a routine fashion. Having said this much, we now proceed to consider the second question. The bid list prepared by the court auctioneer on August 29, 1977 shows that each of the bidders who participated in the auction on August 29, 1977 put his signature against the bid offered by him. For example, Sardar Charanjit Singh, who at one stage offered a bid of Rs 1,70,000 and later raised it to Rs 2,50,000 and again to Rs 2,90,000 has put his signature at three places against the three bids offered by him. Similarly, Gian Chand Sharma, who originally offered a bid of Rs one lakh and later raised it to Rs two lakhs has put his signatures at two places and

[18] **(1987) 4 SCC 717**

Tejwant Singh, who initially offered a bid of Rs 1,80,000 and later raised it to Rs 2,80,000 has put his signature at two places against the bids offered by him. At the end of the document, there is to be found a note by the court auctioneer stating, “It is one o'clock, considering that some good bids may come, the auction will be continued on September 1, 1977 from 10.00 a.m. to 1.00 p.m.” It is seen that the bidders who participated in the auction on August 29, 1977 put their signatures against the respective bids offered by them, but not at the end of the document. If the signatures had been put at the end of the document, that would have established that the court auctioneer had indeed announced that the auction was adjourned to September 1, 1977. The question whether the sale was adjourned to September 1, 1977 and announcement made on the spot on August 29, 1977 was expressly raised and put in issue. One would have thought that the auction purchaser would have called the court auctioneer as a witness on his behalf to prove the statement contained in the bid list. The auction purchaser refrained from calling him as a witness on his behalf. On the other hand there is one telling circumstance in favour of the case put forward by the judgment debtors. We find from a perusal of the bid lists prepared on August 29, 1977 and September 1, 1977 that as many as eight persons participated in the auction on August 29, 1977 and offered their bids while only four persons participated in the auction on September 1, 1977 and offered their bids, and, what is more important, not one of the eight persons who offered their bids on August 29, 1977 was present to offer his bid on September 1, 1977. It is a very curious and significant circumstance. It could not be that those persons who exhibited the desire to purchase the property on August 29, 1977 en masse decided not to participate in the auction on September 1, 1977. In our opinion, the legitimate inference to be drawn from the circumstance is that the bidders who participated in the auction on August 29, 1977 were not aware that the auction was being continued on September 1, 1977. This could only be if as alleged by the judgment debtors there was no announcement on August 29, 1977 by the court auctioneer that the auction would be continued on September 1, 1977. One of the bidders, who participated in the auction on August 29, 1977, was examined as a witness by the judgment debtors. His bid was in fact the highest bid that was offered on August 29, 1977. He stated in his evidence that after he made his bid for Rs 2,90,000, he was informed that the time for the auction was over and that the auction would be held again after notice for the same was published in the newspaper. He said, “My last bid was for Rs 2,90,000 when I was informed that as the time is over, the auction would be re-held after notice for the same as published in the newspaper. I do not remember whether the date for the next auction was announced on that day or not. The auctioneer who was present there had told the bidders that as the time was over the sale will be held at a later date after notice for the sale is published". Relying on the sentence that he did not remember whether the date for the next auction was announced on that date or not, it was sought to be made out that the witness was prevaricating and that an announcement must have been made on that very date about the next date of auction. We do not think that there was any attempt by the witness to prevaricate. What the witness meant was made very clear in the very next sentence when he stated that the auctioneer told the bidders that the sale would be held at a later date after the notice for the sale was published. When he was further questioned in cross-examination, he stated, "Thereafter we were talking amongst ourselves about the next date on which the auction was to be held. However, the next date was not announced. I had come to know about the auction to be held on August 29, 1977 from the publication in the newspaper as well as from my personal friends. . . . The next date was not informed to me by Mr Suraj Prakash. It is wrong to suggest that the auctioneer had announced the date after the bidding was over on August 29, 1977. . . . In fact no date was announced on that date". The evidence of this witness is strongly supported by the circumstance already noticed by us that none of the bidders who participated in the auction on August 29, 1977, participated in the auction on September 1, 1977. There is no conceivable reason as to why this witness who was the highest bidder on August 29, 1977 should have refrained from participating in the auction on September 1, 1977. The evidence of this witness is practically unrebutted since neither the auctioneer nor any of the bidders who participated in the auction on August 29, 1977 was examined on behalf of the auction purchaser. The auction purchaser examined himself and stated that he was present at the auction on August 29, 1977 and that at that time, the auctioneer announced that the auction would be continued on September 1, 1977. We do not have the slightest doubt that he is not a truthful witness. He was unable to explain why he did not offer any bid if he was present at the auction on August 29, 1977. He was also unable to give the name of a single person who offered a bid on August 29, 1977."

25. Learned counsel for the Appellant further submitted that Respondent No. 2, when declared the highest bidder by the Court Auctioneer, automatically became the purchaser of the subject property, and no declaration, in prescribed words, to the said effect, was warranted. In support of the said contention, reliance was placed upon the judgment passed by the Hon'ble Mysore High Court in **K.S. Siddappa v. Lakshmamma**[19], and particularly on the following portion: -

> "Mr. R.V. Srinivasiah, the learned counsel for the contesting respondent, sought to distinguish the aforesaid case from the present case on the ground that the officer conducting the sale in the present case did not expressly state that the accepted the bid of the petitioner or that he knocked down the property to the petitioner. I think there is no substance in this contention. As observed by Narayana Pai, J., R. 84 of Or. 21, C.P.C. does not require that a declaration accepting the bid should take place in a particular form or should be made in any selected or prescribed words. When the officer conducting the sale accepts the deposit of one-fourth of the bid amount of the highest bidder and closes the auction, the inevitable conclusion is that the said officer declared such bidder to be the purchaser.
>
> In the light of the earlier ruling of this Court, it must be held that the learned Munsiff had no power not to accept the bid and to order a resale of the property."

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

26. Learned Senior Counsel appearing on behalf of Respondent No. 2 submitted that the entire dispute revolves around the aspect that whether Respondent No. 2 was or was not declared to be the purchaser of the subject property on 06.05.2025. It was further submitted that the obligation to make payment of the full purchase price is on the purchaser of the property and a purchaser is a person who is declared to be the purchaser at the time of the auction, as provided in Order XXI Rule 84 CPC.

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[19] **1965 SCC OnLine Kar 16**

27. Learned Senior Counsel further drew attention of this Court to clauses of the Proclamation of Sale dated 21.03.2025, and the same are reproduced as under: -

> "2. The amount by which the biddings are to increased shall be determined by the Court Auctioneer conducting the sale. In the event of any dispute arising as to the amount of bid, or as to the bidder, the property shall at once be again put-up to auction.
>
> 3. The reserve price of the property is fixed at Rs. 1,70,00,000/- as stated by the Decree Holder.
>
> 4. The highest bidder shall be declared to be purchaser of the property, provided, always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court, or the Court Auctioneer conducting 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.
>
> xxx xxx xxx
>
> 6. The person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% on the amount of his purchase-money to the Court Auctioneer conducting the sale, and in default of such deposit the property shall forthwith be put-up again and re-sold.
>
> 7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day."

In view of the above, it was submitted that Clauses 4, 6, and 7 of the said proclamation are interconnected, as Clause 4 required a declaration of the purchaser and the person so declared under the said clause would deposit 25% of the purchase money, and the said purchaser will then deposit the remaining

75% within 15 days thereafter. It was further submitted by the learned Senior Counsel that the Auction was conducted on 06.05.2025, and the Court Auctioneer's Report demonstrates that the Appellant refused to agree with the terms of the Proclamation, and in particular Clause 2. It was submitted that the Court Auctioneer had fixed minimum increase of Rs. 10,00,000/- in the lot size, and based on the same, Respondent No. 2 had made a bid for Rs. 2,60,00,000/-, which was declared to be the highest bid by the Court Auctioneer; however, the Appellant did not permit the Court Auctioneer to accept the said bid of Respondent No. 2, and started making bids by increasing Rs. 1,00,000/- in the lot size, and the same was duly noted in the Court Auctioneer's Report.

28. Learned Senior Counsel for Respondent No. 2 further submitted that a perusal of the Court Auctioneer's Report would show that no bidder was declared as the highest bidder on the date of the auction, and the Court Auctioneer had stated that the issue of determination of the highest bidder would be adjudicated by the learned Executing Court. It was, thus, submitted that only the respective bids of the parties were recorded by the Court Auctioneer and 25% of the bid amount was taken from the Appellant and Respondent No. 2.

29. Learned Senior Counsel further drew attention of this Court to the order dated 04.08.2025, as reproduced hereinbefore, and it was submitted that the learned Executing Court had directed both the Appellant and Respondent No. 2 to deposit the demand drafts and the said direction was complied by Respondent No. 2 forthwith.

30. Learned Senior Counsel further drew attention of this Court to the objections dated 26.11.2025 filed by the Appellant in the Execution Proceedings, and particularly on the following portion: -

> "6. That it is further stated that as per report of Court Auctioneer, lot size of bid was kept at Rs. 10,00,000/- (Rupees Ten Lakhs Only) initially, however, when the bid reached Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only), few bidders started bidding for lot size of Rs. 1,00,000/(Rupees One Lakh Only). It is pertinent to mention herein that the lot size of Rs. 10,00,000/- is impermissible and out reaches the proclamation order passed by this Hon'ble Court. The Ld. Auctioner had no authority to fix the such figure as a "lot size". Hence the report saying the final bid of the said property as per lot size is 2,60,000,00 is totally wrong as the bid was lastly reached at 2,50,000,00/- and thereafter
>
> 7. That it is further stated that as per report of Court Auctioneer, the last bidder before the closing of the bid before 1:00 P.M. is the applicant herein at Rs. 2,61,00,000/- (Rupees Two Crore Sixty One Lakhs Only).
>
> 8. That it is pertinent to mention herein that since the applicant herein is the last bidder and since the order of this Hon'ble Court, the highest bidder will be eligible to obtain the said property, the applicant is the highest bidder. The Court Auctioneer has misunderstood the order passed by this Hon'ble Court and inadvertently declared Mr. Lokesh Mendiratta the highest bidder for the said property which was at 2.60 cr.
>
> 9. That in the light of aforementioned reasons, the applicant is the highest bidder of the said property since, the bid of Rs. 2,62,00,000/- (Rupees Two Crore Sixty Two Lakhs Only) by Mr. Lokesh Mendiratta was announced after the clock had ticked 1:00 P.M. therefore, considering his bid is illegal and perverse to the conditions laid down by this Hon'ble Court in its proclamation order."

It was submitted that the Appellant, in the objections, had stated that that the Court Auctioneer had no authority to fix the lot size, and the said stand of the Appellant is totally contrary to the terms of the Proclamation of

Sale. It was further submitted that in the said objections, the Appellant did not raise any objection *qua* Respondent No. 2 being declared as the purchaser or that he had failed to deposit the balance sale consideration within the period prescribed under Order XXI Rules 84 and 85 of the CPC. It was, therefore, contended that the Appellant himself had proceeded on the basis that the highest bidder was yet to be declared by the learned Executing Court. It was further submitted that the learned Executing Court had accepted the amounts deposited by both the Appellant and Respondent No. 2, in order to secure their commitment towards the auction proceedings, and no right in favour of either of the parties had crystallised on account of such deposits.

31. Learned Senior Counsel further drew attention of this Court to the order dated 28.11.2025 passed by the learned Executing Court, and particularly on the following portion: -

> "5. Vide Order dated 04.08.2025, the two bidders, Lokesh Mendiratta and Radhey Sham Pahwa were directed to deposit the DD for the bid amount in the name of the Court within 7 days. It is pertinent to note here that as per the report of the Court Auctioneer the bidder Lokesh Mendiratta was the highest bidder and he was declared purchaser in the auction proceedings. At the same time, the bidder Radhey Sham Pahwa is also claiming to be the highest bidder notwithstanding the fact that his bid of Rs. 2,61,00,000/- was rejected by the Court Auctioneer on the ground of the same being not as per the lot size of Rs. 10 Lakhs.
>
> 6. The Court is yet to confirm and make the auction sale to be absolute.
>
> 7. Today, the bidder, Lokesh Mendiratta is seeking permission to take back his DD on the ground that the validity of the same has expired.
>
> 8. The bidder, Lokesh Mendiratta is allowed to receive back his DD with direction to deposit the DD amount by way of an FDR with an automatic interest renewal clause in the name of this Court within 7 days from today.

> 9. Though, the bidder Radhey Sham Pahwa was not declared to be the highest bidder/purchaser in the auction sale, he not only deposited 25% of his bid amount on the spot, but he also deposited the entire bid amount before this Court pursuant to Order dated 04.08.2025. The bidder, Radhey Sham Pahwa is also at liberty to take back his DD and to deposit the DD amount by way of an FDR with an automatic interest renewal clause in the name of this Court within 7 days from today. It is made clear here that deposit of any amount, be it 25% of the bid amount on the spot, or deposit of the full bid amount before this Court by the bidder, Radhey Sham Pahwa, does not confer any right upon him to be declared purchaser in the auction sale.
>
> 10. The Court is yet to decide the Objections of Sanjay Arora and Radhey Sham Pahwa. Obviously, the auction sale has not yet been confirmed and made absolute."

It was submitted that the learned Executing Court had categorically observed that the auction sale was yet to be confirmed and made absolute, and the learned Executing Court further clarified that mere deposit of any amount by the Appellant, would not confer any right upon him to be declared the purchaser in the auction sale. It was submitted that the learned Executing Court had also recorded that the objections filed by the Appellant and Respondent No. 3 were yet to be adjudicated. It was contended by the learned Senior Counsel that the aforesaid order was never challenged by the Appellant, and therefore, the same has attained finality.

32. Learned Senior Counsel further pointed out that Respondent No. 2 had filed an application seeking rectification of the order dated 11.02.2026; however, the learned Executing Court had dismissed the same *vide* order dated 11.04.2026. It was further submitted that the order dated 11.04.2026 itself recorded that the previous orders were correctly recorded, including the order dated 28.11.2025 passed by the learned Executing Court.

33. Learned Senior Counsel further drew attention of this Court to the impugned order, and particularly on the following portion: -

> "15. As per the objections filed by the Objector Radhey Shayam Pahwa, the Ld. Court Auctioneer had put the bidding lot size of Rs. 10 lakhs, after the auction process had already begun and the initial bids were taken by her in writing. There was no declaration of the lot size, prior to the initial bids being sought, therefore, the Ld. Court Auctioneer could not have changed the rules of the game, after it had already begun. The Ld. Court Auctioneer was directed by the proclamation of sale to declare the final successful bidder, however, no such declaration of the successful bidder was made and she had duly accepted the cheque of 25% of the bid amount made by him and since, he had bid more than the other bidder that is Sh. Lokesh Mendiratta and has further deposited the entire sale amount with this Court, therefore, he must be declared as the successful bidder of the auction process being the highest bidder, whose cheque was accepted by the Ld. Court Auctioneer. Furthermore, since the bidder Sh. Lokesh Mendiratta had already withdrawn his bid and prayed for the release of the 25% amount deposited by him, which was duly recorded in order dated 22.05.2025, therefore, there is no other bidder left and he may be declared as the successful bidder.
>
> 16. Coming to the objections raised in the application moved under Order XXI Rule 90 CPC 1908, seeking setting aside of the proceedings dated 06.05.2025, although the application has been moved by one M/s Akriti Estate Service, which is stated to be sole Proprietorship of the Objector, Sh. Sanjay Arora, as per the application, the Objector had participated in the auction proceedings on behalf of its client, however, the name of the client is not mentioned in the application form for bidding and it is not even mentioned in the Ld. Court Auctioneer's report that the Objector Sh. Sanjay Arora was not participating in the auction process in his personal capacity, however, he was participating on behalf of some other person/entity, which was his client.
>
> 17. The Ld. Court Auctioneer's report is accompanied with the auction bid forms, which were filled by all the bidders and it contained the initial bid amount, alongwith the report. The careful perusal of the auction bid form, as filled and submitted by the Objector Sh. Sanjay Arora clearly

reflects that he was bidding in his personal capacity and not as the sole proprietor of M/s Akriti Estate Service or on behalf of its undisclosed client, therefore, the present objections being filed by Sh. Sanjay Arora, as the sole proprietor of M/s Akriti Estate Service, is not maintainable, since, the proprietorship firm had not taken part in the auction process. Furthermore, the proclamation of sale as drawn up by the Ld. Predecessor of this Court had no mention of any previous inspection to be afforded to the prospective bidders and even though the Ld. Court Auctioneer, in the interest of fairness had offered the inspection of the premises, as contained in the proclamation published in the newspaper, there is no mention of any objections taken by Sh. Sanjay Arora in the auction bid form that he was not afforded the inspection or that he was taking part in the bidding process, after getting his objections recorded. The Ld. Court Auctioneer's report is categorical in nature that the Objector Sh. Sanjay Arora had joined the proceedings only at 12:03 PM and by that time, the inspection period had already expired and it was because of his insistence, the auction process started belatedly, therefore, at this stage, he cannot take the refuge under the fact that the inspection of the property could not have been afforded to him, even if he had reached on time, as the Ld. Court Auctioneer was not having the keys of the premises, as mentioned in the report. Therefore, his objections are devoid of merits and they are hereby dismissed.

18. Now coming to the objections raised by the Objector Sh. Radhey Shyam Pahwa, this Court finds no merit in his submissions that he had made the highest bid of Rs. 2,61,00,000/- or that since the Ld. Court Auctioneer had accepted his cheque of Rs. 25% amount, therefore, he must be declared as the highest bidder/purchaser. The terms of the proclamation sale were absolutely clear, since, the reserve price was fixed by this Court, however, it was categorically mentioned that the amount by which the biddings were to increased, was to be determined by the Ld. Court Auctioneer conducting the sale, which was duly done and after the submissions of the bidding forms with the initial bids, it was categorically announced by the Ld. Court Auctioneer that the lot size was fixed at Rs. 10 lakhs and in spite of specific request made by few bidders, including the present Objector, the Ld. Court Auctioneer refused to accede to their request to reduce the lot size from Rs. 10 lakhs to Rs. 1 lakh. Since, at his insistence and to maintain the peaceful atmosphere, the Ld. court Auctioneer had recorded his bid for Rs. 2,61,00,000/- and his cheque for 25% of the bid amount, does not make him the highest bidder, as his bid was not conforming to the bidding lot size. Therefore, his

objections are also devoid of any merits and are hereby dismissed. In the interest of justice, the amount that is deposited by him shall be released to him, since, he was never declared as the highest bidder/successful purchaser.

19. Since, the objections filed by both Sh. Sanjay Arora and Sh. Radhey Shyam Pahwa are devoid of any merits and they are dismissed vide the present order, therefore, in terms of the report of Ld. Court Auctioneer, **Sh. Lokesh Mendiratta is hereby declared as the successful purchaser being the highest bidder.** Since, till date, there was a cloud upon the auction sale and this Court was yet to confirm the auction sale conducted on 06.05.2025, therefore, the successful purchaser/highest bidder Sh. Lokesh Mendiratta is granted 15 days time to deposit the entire bid amount with this Court.

20. The aforesaid applications under Order XXI Rule 90 CPC 1908 are hereby disposed of accordingly.

21. The copy of this order be given dasti as prayed for."

It was submitted that the learned Executing Court was pleased to declare Respondent No. 2 as the successful purchaser, being the highest bidder and had dismissed the objections filed on behalf of the Appellant and Respondent No. 3. It was further submitted that the learned Executing Court had held the objection of the Appellant with respect to the lot size is devoid of merit, and it was observed by the learned Executing Court that the bid size was only to be decided by the Court Auctioneer.

34. Learned Senior Counsel had further submitted that Respondent No. 2, on 05.05.2026, had deposited the remaining 75% of the sale consideration amount of Rs.1,95,00,000/- forthwith, and thus, the entire amount of sale consideration was made by Respondent No. 2 on the same date when the latter was declared the purchaser.

35. Learned Senior Counsel for Respondent No. 2 further submitted that the contention of the Appellant being the highest bidder and the Court Auctioneer voluntarily accepting the bid of the Appellant by increasing the lot size by Rs. 1,00,000/- is wholly misconceived, as the Court Auctioneer's Report is contrary on the said aspect. Reliance was placed upon the following portion of the report: -

> "9. That as is understood by the undersigned, it is the discretion of the undersigned to decide the lot size while keeping in mind the interest of the public. It may be noted that the reserved price was fixed at Rs. 1,70,00,000/- and the undersigned deemed it fit to increase the bid amount by Rs. 10,00,000/- which was about 6% of the reserved price. For the assistance of the Ld. Court it is once again being clarified that at no point of time the lot size was reduced from Rs. 10,00,000/- by the undersigned. The on-the-spot proceeding report prepared is annexed herewith was **ANNEXURE-E (Colly)** along with the true typed copy of the report."

36. Learned Senior Counsel for Respondent No. 2 further submitted that the Appellant could not be permitted to derive any advantage from his own conduct, in raising objections contrary to the terms of the Proclamation of Sale and disputing the auction proceedings. It was further submitted by the learned Senior Counsel that the Appellant himself had sought a declaration before the learned Executing Court that he be declared the highest bidder and successful purchaser of the subject property, and therefore, the Appellant could not now contend that Respondent No. 2 ought to have deposited the balance sale consideration immediately upon conclusion of the auction proceedings.

37. It was further submitted that in auctions conducted under supervision of the Court through a Court Auctioneer or other authorised officer, the bids received during the auction are merely recorded, and where any dispute arises with respect to determination of the successful purchaser, the matter is required to be placed before the learned Executing Court, and thereafter, the Court would declare the purchaser, who would deposit 25% of the purchase amount on the spot and the remaining 75% amount within 15 days thereafter, in terms of Order XXI Rules 84 and 85 CPC.

38. Learned Senior Counsel had placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Navalkha & Sons v. Sri Ramanya Das**[20], to contend that the Hon'ble Supreme Court had categorically held that where acceptance of the bid is subject to confirmation by the Court, the highest bidder does not acquire any vested or absolute right, merely upon acceptance of his bid, and he further cannot claim automatic confirmation of the sale. Relevant portion of the said judgment is reproduced as under: -

> "**6.** The principles which should govern confirmation of sales are well-established. Where the acceptance of the offer by the Commissioners is subject to confirmation of the Court the offerer does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the Court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the Court to satisfy itself that having regard to the market value of the property the price offered is reasonable. Unless the Court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. In *Gordhan Das Chuni Lal Dakuwala* v. *Sriman Kanthimathinatha Pillai* [1920 SCC OnLine Mad

[20] **(1969) 3 SCC 537**

166 : AIR 1921 Mad 286] it was observed that where the property is authorised to be sold by private contract or otherwise it is the duty of the Court to satisfy itself that the price fixed is the best that could be expected to be offered. That is because the Court is the custodian of the interests of the Company and its creditors and the sanction of the Court required under the Companies Act has to be exercised with judicial discretion regard being had to the interests of the Company and its creditors as well. This principle was followed in *Ratnaswami Pillai* v. *Sabapathi Pillai* [1924 SCC OnLine Mad 466 : AIR 1925 Mad 318] and *S. Soundarajan* v. *Roshan & Co.* [1939 SCC OnLine Mad 205 : AIR 1940 Mad 42] In *Subbaraya Mudaliar* v. *Sundarajan* [1951 SCC OnLine Mad 169 : AIR 1951 Mad 986] it was pointed out that the condition of confirmation by the Court being a safeguard against the property being said at an inadequate price, it will be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing the highest bid at the auction held in pursuance of its orders, should see that the price fetched at the auction is an adequate price even though there is no suggestion of irregularity or fraud. It is well to bear in mind the other principle which is equally well-settled namely that once the Court comes to the conclusion that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of the sale or offer already received. (See the decision of the Madras High Court in *Roshan & Co. case*)."

39. Learned Senior Counsel had further placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.**[21], to contend that the where an auction is subject to confirmation by the Court or competent authority, the auction is not complete, and no rights accrue in favour of the auction purchaser until the sale is confirmed by the competent authority. Relevant portion of the said judgment is reproduced as under: -

"**30.** In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-

[21] **(2008) 9 SCC 299**

purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

40. Learned Senior Counsel further drew attention of this Court to the judgment passed by the Hon'ble Supreme Court in **Sanjay Sharma v. Kotak Mahindra Bank Ltd.**[22], and particularly to the following portion: -

> "**33.** It is now a well-settled principle that a sale by way of public auction cannot be set aside until there is any material irregularity and/or illegality committed in holding the auction or if such auction was vitiated by any fraud or collusion. This Court in V.S. Palanivel v. P. Sriram, 2024 INSC 659 held that unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have. Recently, this Court in Celir LLP v. Ms. Sumati Prasad Bafna Contempt Petition (C) Nos. 158-159 of 2024 in Civil Appeal Nos. 5542-5543 of 2023 held as follows:
>
> > "218. Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule that does not have any fundamental procedural error does not take away the foundation of authority for such a proceeding. In such cases, courts, in particular, should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity."

It was, thus, submitted that a Court must refrain from interfering with

[22] **2024 SCC OnLine SC 4589**

Signature Not Verified
Signed By:SHIVANI NEGI
Signing Date:25.08.2026 17.54

concluded auction sales, unless there exist serious flaws, such as fraud, collusion, grave irregularities, inadequate pricing or substantial injury caused by such irregularity.

41. Learned Senior Counsel had further relied upon the judgment passed by the Hon'ble Allahabad High Court in **Munshi Lal and Anr. v. Ram Narain**[23], to contend that mere making of the last bid does not conclude the sale and for conclusion of sale, it is necessary for the sale officer to accept the final bid and make a declaration as to who is the purchaser.

42. Reliance was further placed on the judgment passed by the Hon'ble Madras High Court in **Ratnasami Pillai v. Sabapathy Pillai & Ors.**[24], to contend that unless the Court has confirmed the sale, the mere making of the highest bid does not result in conclusion of the sale.

43. Learned Senior Counsel had further placed reliance upon the judgment passed by the Hon'ble Lahore High Court in **Abdulla Khan v. Ganpat Rai**[25], to contend that an execution of sale, whether held in the immediate presence of the presiding officer of the Court or not, is incomplete until the presiding officer of the Court has accepted the bid and declared the purchaser under Order XXI Rule 84 CPC, and a mere order to close the bidding did not complete the sale, even though the highest bidder was erroneously permitted to make 25% deposit as required under Order XXI Rule 84 CPC. Relevant portion of the said judgment reads as under: -

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[23] **1912 SCC OnLine ALL 94**
[24] **1924 SCC OnLine Mad 466**
[25] **1929 SCC OnLine Lah 127**

> "**4.** It was held by the Punjab Chief Court in *Khairan* v. *Alliance Bank of Simla* [[1919] 50 I.C. 914.] that a sale of immovable property in execution of a decree is not complete until the officer conducting the sale has accepted the final bid and the purchaser has paid the deposit required by O. 21, R. 84 of the CPC. In *Jaihhadar Jha* v. *Matukdhari Jha* [A.I.R. 1923 Pat. 525 : 2 Pat. 548.] , it was held that an execution sale, whether held in the immediate presence of the presiding officer of the Court or not, is not complete until the presiding officer of the Court has accepted the bid and declared the purchaser under O. 21, R. 84. A mere order to close the bidding did not complete the sale even though the highest bidder was erroneously permitted to make the 25 per cent deposit required by R. 84. In *Munshi Lal* v. *Ram Narain* [[1913] 35 All. 65 : 17 I.C. 783 : 10 A.L.J. 475.] it was also held that the sale of immovable property in execution of a decree is not complete until the sale officer has accepted the final bid and the purchaser has paid deposit of 25 per cent of the purchase money required by R. 84. The period of 30 days prescribed by R. 92 would not, therefore, begin to run against a person applying under R. 89 if for any reason the final bid remains for a time unaccepted by the sale officer.
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> **5.** It is not necessary for me in the present case to go so far as the learned Judges, who decided *Jaibhadar Jha* v. *Matukdhari Jha* [A.I.R. 1923 Pat. 525 : 2 Pat. 548.] , it is clear that the Tahsildar, who was the sale officer in the present case, did not accept the final bid, but he sent the proceedings to the Court recommending that it should not be accepted. He further refused to accept the usual 5 per cent commission taken as auction fee. There is no provision in the Act as regards this fee."

44. Learned Senior Counsel had further relied upon the judgment passed by the Hon'ble Calcutta High Court in **Surendramohan Sarkar v. Manmathanath Banerji**[26], to contend that it was held in the said case that property in an auction held by the Court does not become complete before its acceptance by the Court, and the officer of the Court, the Nazir or any other person empowered by the Court, is simply a ministerial officer appointed to

[26] **1930 SCC OnLine Cal 290**

carry out certain duties imposed upon him by the Court, and after the sale is held, so far as the bidding is concerned, the matter must be placed before the Court for declaration of the purchaser. It was further submitted that before such declaration, the sale does not become complete and the bidder does not acquire any interest in the property.

45. Reliance was further placed on the judgment passed by the Hon'ble Madras High Court in **A. Poonhavana Naicker v. S. Muthurama Naidu**[27]. It was submitted by the learned Senior Counsel that in the said case it was held that execution of sale is incomplete until the presiding officer of the Court has accepted the bid and declared the purchaser under Order XXI Rule 84 CPC. Relevant potion of the said judgment is reproduced as under: -

> "**4.** The question then arises as to whether the Court below has acted with material irregularity in the exercise of its jurisdiction in holding that the sale has been, concluded on 1-11-1950. That the Central Nazir of the District Court is an officer empowered to conduct the sale is clear and evident from R. 200, Civil Rules of Practice which states that the person appointed to sell the property shall conduct the sale in the manner prescribed by the Code for the sale of attached property etc. According to the structure of the administrative machinery at the head quarters of the District, the Cental Nazir of the District Court is a person who is automatically deemed to be appointed for purposes of conducting court sales under R. 200. There is no dispute that the Central Nazir in this case was the proper person to conduct the sale. Appendix E Sch. 1 of the CPC, form No. 29 deals with the proclamation of sale and para 3 of the conditions of sale states that the highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid and provided that it shall be in the discretion of the Court or the officer holding the sale to decline the acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so. This condition, which has a force of law, because it is a form in

[27] **1951 SCC OnLine Mad 142**

Appendix E to the Code of Civil Procedure, lays down clearly that it is within the discrimination of the Court to accept or reject a bid before the sale conducting officer. Mr. Seshachariar, for the purchaser, very strenuously contends that when the property is knocked down for the highest bid, the Court has no further jurisdiction in the matter to say that the sale has not become complete; that is, automatically the Court must accept the highest bid and hold that the person who has knocked it down is the purchaser and thereby the sale is concluded. I am not able to agree with this contention. Form No. 71, Civil Rules of Practice, relates to the report of the Central Nazir or other auctioneer under R. 200(2) to the Court and there it is laid down as to what the Central Nazir should state to the Court regarding the procedure and the manner in which the sale was conducted. It is not necessary to extract here in detail the various clauses as well as schedules mentioned in that form because para. 3 says that the Central Nazir has to inform the Court that he put up the several lots for sale by auction at so and so and the person who knocked down the several lots. It is then left to the Court to accept the action of the Central Nazir or to reject it. To say that because the sale conducting officer has accepted the highest bid and, therefore, the Court has no further jurisdiction but should, as it were, take upon itself the vicarious duty of confirming the sale, is in my opinion, illogical. It is not as if this decision is bereft of authority. In — '*Jaibhdar Jha* v. *Matukdhari Jha*', AIR 1923 Pat 525 (A), Das and Macpherson JJ. had considered a matter of similar nature. They held that an execution sale, whether held in the immediate presence of the presiding officer of the Court or not, is not complete until the presiding officer of the Court has accepted the bid and declared the purchaser under O. 21, R. 84. A mere order to close the bidding does not complete the sale even though the highest bidder is erroneously permitted to make the deposit required by R. 84. They further held that the formal order declaring who has purchased the property put up for sale should be submitted for signature under R. 84 expeditiously, before the presiding officer rises for the day. The following observations at page 527 are pertinent.

> "……… In fact, the function of the Nazir or other officer appointed by the Court to conduct the auction is of a ministerial character; if he conducts it in presence of the presiding officer, the latter is still in direct charge of it, forthwith declares under O. 21, R. 84, who the purchaser is and signs the formal order (as in fact happened on the 16th November in this case), and the sale is not complete until the declaration has been made and the order signed. Equally when the auction is (for reasons of convenience) not held in his presence, the

presiding officer is still in charge of it and the officer conducting the sale is in no more responsible position than if he were conducting it in presence of the presiding officer; that the sale may be completed, not only the order of the presiding officer to close the bidding, but also his order under O. 21, R. 84, formally accepting the bid and declaring the purchaser is required exactly as in the sale proceedings conducted in his presence."

5. These observations, as I have already stated, are pertinent to the facts of the case. The Central Nazir being an officer immediately subordinate to the District Judge conducts the sale not in the actual presence of the Subordinate Judge, but in a separate place; and even so when the Central Nazir accepts a final bid, the sale will become complete only when the Court, which has directed the sale accepts the final bid. It is one to the Court in its judicial discretion either to accept it or reject it. I need not say under what conditions a Court will reject it, because conditions might be different in different cases. The case in AIR 1923 Pat 525 (A) came up for consideration in — '*Surendra-mohan* v. *Manmathanath*', AIR 1931 Cal 583 (B) before Sahrawardy and Patterson JJ. and the learned Judges dissenting from an earlier judgment of Panton J. of the same Court and following AIR 1923 Pat 525 (A), held that the sale of property in an auction by the order of a Court, although held by an officer of the Court or by any person appointed in this behalf, is nevertheless a sale by the Court itself. It is not completed until the Court formally accepts the bid and declares the purchaser under O. 21, R. 84 of the CPCode. Prior to such order, the bidder, whose bid was accepted by the officer at the time of the bid, does not acquire any interest in the property and the Court can, for adequate reasons, direct the sale of the property without any notice to the bidder. Since the principles enunciated in these decisions has my complete approval, it is unnecessary for me to elaborate at any length the facts of the particular cases adverted to by me. In our own Court, though on facts not 'ad idem', there is a decision in — '*Ratnasami Pillai* v. *Sabapathi Pillai*', AIR 1925 Mad 318 (C) where Krishnan and Odgers JJ. considered a similar matter and following the decision in — '*Surendro Kesub* v. *Doorgasoondary Dassee*', 15 Cal 253 (D) the learned Judges held that, no doubt, the ordinary rule regarding a private auction is that where an auction is held without any reservation, there is an implied condition that the highest bid will be accepted, but that rule cannot be said to apply to a sale by a Court officer under the directions of the Court. In court sales, it is the acceptance by the Court that constitutes the contract. These observations make it clear that however much the

Central Nazir might have thought that the sale was concluded, it cannot become effective and conclusive unless the Court accepts it."

46. Learned Senior Counsel had further relied upon the judgment passed by the Hon'ble Oudh Chief Court in **Hari Shankar v. Amina Bibi**[28], to contend that the sale of a property in an auction by the order of a Court, although held by an officer of the Court or by any other person appointed, is nevertheless a sale by the Court itself, and the same is incomplete until the Court formally accepts the bid and declares the purchaser under Order XXI Rule 84 CPC.

47. Reliance was further placed on the judgment passed by the Hon'ble Allahabad High Court in **Lala Ram & Anr. v. Bhajani**[29], to contend that for a sale to be completed under Order XXI Rule 84 CPC, there has to be an acceptance by the sale officer of the highest bid, and thereafter, there has to be a declaration to the said effect. However, it was submitted by the learned Senior Counsel that in the present case, the declaration of the purchaser was made only on 05.05.2026 *vide* the impugned order, and therefore, the sale could not have been concluded on any prior date. Relevant portion of the said judgment reads as under: -

"**6.** In *Ratnasami Pillai* v. *Sabapathy Pillai* [A.I.R. 1925 Madras 318.] , it was held that, when a court sale takes place, the sale in favour of a particular individual is not complete unless and until it receives the confirmation of the Court and that it is the acceptance of the Court that constitutes the contract. In this case the auction was held by the Receiver and Ratanasami Pillai was the highest bidder. When the bids were taken before the Court for confirmation, it refused to accept Ratnasami Pillai's bid and directed a re-sale. It appears that, in this case, the Receiver had not accepted the highest bid of Ratnasami Pillai. The contention before

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[28] **1934 SCC OnLine Oudh CC 169**
[29] **1969 SCC OnLine All 123**

the High Court was that Ratnasami Pillai having made the highest bid, there was a concluded contract between him and the receiver. It is this contention which was repelled. Therefore this case also does not lay down any general proposition of law which can be applied to the present case.

7. In *Surendra Mohan Sarkar* v. *Manmathanath Banerji* [A.I.R. 1931 Cal. 583.] , the Calcutta High Court, following the decision of the Patna High Court in *Jaibhadar Jha* v. *Matukdari Jha* [A.I.R. 1923 Patna 525.] , observed:

"Though the sale may be made by an Officer of the court or by any person appointed in this behalf, the sale is a sale by the Court; the officer of the Court, for instance the nazir or any person empowered by the Court, is simply a ministerial officer appointed to carry out certain duties imposed upon him by the Court. After the sale is held and completed, so far as the bidding is concerned, the matter must be placed before the Court and, under Order 21, Rule 84, on every sale the person declared to be the purchaser shall pay, after such declaration, a deposit of 21 per cent on the amount of his purchase money to the officer conducting the sale. Accordingly, before such declaration is made, the sale does not become complete and effective and the bidder does not acquire any interest in the property."

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10. In *Ramkrishna* v. *Dulichand* [A.I.R. 1956 Madhya Bharat 30.] , a Single Judge of the High Court of Madhya Bharat observed:

"If, therefore, the officer conducting the sale has no authority to accept a bid or conclude the sale, the sale is not complete until the bid is accepted by the Court. That is exactly the position in Madhya Bharat."

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24. All that is necessary for a sale to be complete under Order XXI, Rule 84 is that the sale officer should accept the highest bid and declare the purchaser and the purchaser should deposit 25 per cent of the purchase price. If the court has the power to set aside the sale and does so, then the sale will be wiped out; but, if the court approves of the sale, then the sale by the sale officer stands. If the sale stands, then the date of the sale cannot be any other date but the date on which the sale officer accepted the highest ??? and declared the purchaser."

48. Learned Senior Counsel had further placed reliance upon the judgment passed by the Hon'ble Patna High Court in **Jaibahadar Jha v. Matukdhari Jha**[30], to contend that the function of the Nazir or other officers appointed by the Court to conduct an auction is ministerial in nature, and the sale does not get complete unless the presiding officer declares the purchaser under Order XXI Rule 84 of CPC.

49. It was further submitted by the learned Senior Counsel that an officer conducting sale, has no authority to accept a bid or conclude the sale, and the said sale would not be completed until the bid is accepted by the Court. It was further submitted that merely crediting the money deposited by the auction purchaser, does not necessarily lead to the conclusion that the bid has been accepted by the Court. In support of the said contention, reliance was placed on the judgment passed by the Hon'ble Madhya Bharat High Court, Gwalior Bench, in **Ramkrishna v. Dulichand**[31]. Relevant portion of the said judgment is reproduced as under: -

> "**11.** It therefore, the officer conducting the sale has no authority to accept a bid or conclude the sale, the sale is not complete until the bid is accepted by the Court. That is exactly the position in Madhya Bharat. From the report of the Nazir it is clear that he has no authority to accept a bid or conclude the sale. Therefore, the decision given in — '*Mahomed Yaccob* v. *P.L.R.M. Firm*', (F), is not applicable to the present case. In — '*Lokman Chhabilal Jain* v. *Motilal Tulsiram*', AIR 1939 Nag 269 (G), a Division Bench of the Nagpur High Court held as follows:
> "In the Central Provinces a time is set aside during which persons may make their bids which are entered in a list. When that time is up, the highest bidder is declared by the officer conducting the auction, to be the

[30] **1923 SCC OnLine Pat 268**
[31] **1954 SCC OnLine MP 132**

> purchaser. It is not the practice for the officer conducting the sale merely to take the list of bidders to the Judge and ask the Judge to declare who is the purchaser."
>
> **12.** This decision is again based on the practice that obtains in Central Provinces. Consequently this view which is based on the local practice is not relevant to the present case. In these circumstances the view taken in AIR 1923 Pat 525 (A), appears to be, if I may say so with respect, the correct view. The sale is held by the Court and the officer conducting the sale does so, under the instructions of the Presiding Officer.
>
> **13.** Besides as pointed out by their Lordships of the Madras High Court in AIR 1951 Mad 986 (E), it is not only proper but necessary that the Court in exercising the discretion should see that the price fetched at the auction is an adequate price. It is, therefore, necessary for the Court to pass the order of acceptance. This practice is also very salutary in so far as it eliminates the possibility of any collusive action by the officer conducting the safe. I am, therefore, of the opinion that the sale is not complete unless it is accepted by the Presiding Officer.
>
> **14.** In the present case no order of the acceptance has been passed by the Presiding Officer. When the Nazir submitted his report and also 25 per cent, of the sale price deposited by the auction-purchaser, the Court ordered the amount to be credited. But the Presiding Officer did not say whether he accepted the bid or not. In these circumstances the sale was not complete on 9-4-1954. It does not appear from the record that the Court passed any order accepting the bid of the auction purchaser. Even when the rest of the purchase-money was deposited by the auction purchaser the Court gave the following order:
> ७१४७ रु० जमा हो।
>
> **15.** This clearly indicates that the order of acceptance was not passed even when the rest of the purchase-money was deposited by the auction purchaser. Merely crediting the money deposited by the auction-purchaser does not necessarily lead to the conclusion that the bid has been accepted by the Court."

50. Learned Senior Counsel for Respondent No. 2, had further sought to distinguish the judgments, as relied upon by the learned counsel for the Appellant.

51. *Qua* **Manilal Mohanlal Shah** (***Supra***), it was submitted by the learned Senior Counsel that in paragraph 8 placitum h and paragraph 13 of the said judgment, it is clearly stated that the payment of money has to be made by the person being declared as the purchaser, and in the present appeal, the declaration of purchaser was made only on 05.05.2026 by the learned Executing Court, and the payment was made by Respondent No. 2 on the very same date.

52. *Qua* **Gas Point Petroleum India** (***Supra***), it was submitted by the learned Senior Counsel that in the said case, there was no dispute regarding the declaration of the highest bidder, or who is to be the highest bidder. It was further submitted that in the said case, the highest bidder defaulted to make the payment, and therefore, the said judgement is not applicable in the facts of the instant case, as there was no dispute with respect to declaration of the purchaser.

53. *Qua* **Sanjay Bhimrao Patil** (***Supra***), it was submitted by the learned Senior Counsel that in paragraph 4 placitum c of the said judgment, there was a declaration of Respondent No. 2 being the highest bidder, and it was only when an application for extension of time was made, the learned Court had said that it could not be done in the facts of the said case.

54. *Qua* **Nand Lal** (***Supra***), **Varghese** (***Supra***) and **Sunil Seth** (***Supra***), it was submitted that there was no dispute about declaration of purchaser in the said cases, and therefore, the reliance, as placed by the learned counsel for the Appellant, is wholly misplaced.

ANALYSIS

55. Heard the learned counsel and Senior Counsel for the parties, and perused the record.

56. At the outset, it would be relevant to note that the present appeal has been preferred by the Appellant under Order XXI Rule 58 of the CPC, thereby challenging the impugned order passed by the learned Executing Court. *Vide* the impugned order, the learned Executing Court had dismissed the objections filed by the Appellant and Respondent No. 3 under Order XXI Rule 90 of the CPC, alleging irregularity and fraud in the auction proceedings, and had confirmed the sale in favour of Respondent No. 2. It would be pertinent to note that an order dismissing objections filed under Order XXI Rule 90 of the CPC is appealable under Order XLIII Rule 1(j) of the CPC. However, since the Appellant has challenged the aforesaid order in the present proceedings, this Court, without entering into the question of the provision under which the present appeal has been preferred, deems it appropriate to examine the challenge on merits.

57. Respondent No. 1 had filed the execution petition with respect to the judgment and decree dated 18.02.2017 passed by the learned ADJ, and since the judgment debtor could not satisfy the said decree, the learned Executing Court deemed it appropriate to sell the subject property, by conducting a Court Auction. The learned Executing Court had then appointed the Court Auctioneer on 21.03.2025, and settled the terms of sale by the way of proclamation. Clause 2 of the said proclamation provided that the amount by which the biddings were to be increased, had to be determined by the Court Auctioneer and in the event of any dispute pertaining to the bid amount, the property shall at once be again put-up to auction.

58. The said auction was scheduled on 06.05.2025, from 11:00 AM to 01:00 PM, at the parking lot of the subject property. In the said auction, six bidders participated, *i.e.*, the Appellant and Respondents No. 1 to 5. During the auction, the initial bids were submitted by the bidders, and thereafter, public bidding commenced. The initial bid of Respondent No. 3 was the highest at Rs. 1,80,00,000/-. The bidding thereafter proceeded with an increase of Rs. 10,00,000/- in each bid, and upon the bid amount reaching Rs. 2,50,00,000/-, some of the bidders requested that the lot size be reduced to Rs. 1,00,000/-.

59. The learned Court Auctioneer, however, declined the said request and maintained the lot size of Rs. 10,00,000/-. It was, however, agreed that the bids offered by the bidders in amounts not conforming to the lot size of Rs. 10,00,000/- would be recorded, but would not be treated as formal bids for the purpose of determining the highest bidder. The Court Auctioneer thereafter recorded that the highest bid in accordance with the lot size of Rs. 10,00,000/- was made by Respondent No. 2 for a sum of Rs. 2,60,00,000/-. The Appellant thereafter offered a bid of Rs. 2,61,00,000/-, although the next permissible bid, in terms of the lot size, was Rs. 2,70,00,000/-. The said bid of the Appellant was recorded at his request, but was not treated as a formal bid. Respondent No. 2 also made a bid of Rs. 2,62,00,000/-, which similarly did not conform to the prescribed lot size. Since no bidder offered Rs. 2,70,00,000/-, the bid of Rs. 2,60,00,000/- made by Respondent No. 2 was recorded by the Court Auctioneer as the highest bid in accordance with the terms of the proclamation.

60. It is further relevant to note that the Court Auctioneer accepted the cheque towards 25% of the bid amount from Respondent No. 2. The Appellant also insisted upon depositing the cheque towards 25% of his bid amount of Rs. 2,61,00,000/-, which was accepted and placed before the learned Executing Court. The acceptance of the said amount by the Court Auctioneer, however, was in the backdrop of the dispute raised by the Appellant with respect to the lot size and the determination of the highest bid.

61. At this stage, it would be pertinent to note the following clauses of the Proclamation of Sale: -

> "4. The highest bidder shall be declared to be purchaser of the property, provided, always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court, or the Court Auctioneer conducting 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.
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> xxx xxx xxx
>
> 6. The person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% on the amount of his purchase-money to the Court Auctioneer conducting the sale, and in default of such deposit the property shall forthwith be put-up again and re-sold.
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> 7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after sale of the property,

exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses, of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold."

62. The following observations were made by the Court Auctioneer in her report: -

"6. That thereafter the undersigned had announced that the highest bid received is for Rs.1,80,00,000/- and further the bidding via public bidding will now begin. It was announced that the bids will now be increased in the lot of Rs. 10,00,000/-. Gradually bid amount was increased by the lot of 10 lacs. When the bid amount of Rs. 2,50,00,000/- was reached, few of the bidders started insisting that now lot size should be reduced to Rs.1,00,000/-, however since in the opinion of the undersigned that would not have been feasible it was clarified that the lot amount will continue to be of Rs. 10,00,000/-. Upon this, the bidders further insisted that their bid amount be noted even if the lot size is kept as 10 lac. Therefore, to maintain the peaceful atmosphere it was agreed that their bid amounts will be noted however the lot size is not being reduced, and highest bidder will be declared as per the lot size of 10 lac only.

7. That the bidders then started to bid on their own for the lot size of 1 lac, a bid amount of Rs.2,54,00,000/- was reached, after which once again the undersigned announced bid amount of Rs. 2,60,00,000/- which was in accordance with the agreed lot size of 10 lac. Upon announcement of bid amount of Rs. 2,60,00,000/- one bidder Sh. Lokesh Mendiratta accepted the same. By this time, it was already 12.59 p.m., the next bid amount for Rs. 2,70,00,000/- was announced, however nobody accepted the bid amount or Rs.2,70,00,000/-. One bidder Sh. Radhey Shyam Pahwa however mentioned that he is bidding for Rs.2,61,00,000/-, the same was noted after duly informing him that the bid amount announced is for Rs.2,70,00,000/-. By this time the clock had stuck 1.00 p.m. and upon the same Sh. Lokesh Mendiratta asked his bid to be noted at

Rs.2,62,00,000/-. It was clarified to him that it is already 1.00 p.m. and anyhow the bid amount announced is for Rs.2,70,00,000/-.

8. That thus as per the auction conducted by the undersigned the highest bid was received for an amount of Rs.2,60,00,000/- (Two Crores and Sixty Lacs only) by Sh. Lokesh Mendiratta which was in accordance with the terms laid at the time auction process was commenced. A cheque having number 000383 drawn on Kotak Mahindra Bank, Lajpat Nagar, for Rs. 65,00,000/- (25% of the highest bid amount) in the name of "District Judge-03 South-East District Saket Court Complex, New Delhi" was accepted from Sh. Lokesh Mendiratta (Highest bidder/H1) and the same is annexed herewith as **ANNEXURE-D**.

9. That as is understood by the undersigned, it is the discretion of the undersigned to decide the lot size while keeping in mind the interest of the public. It may be noted that the reserved price was fixed at Rs. 1,70,00,000/- and the undersigned deemed it fit to increase the bid amount by Rs. 10,00,000/- which was about 6% of the reserved price. For the assistance of the Ld. Court it is once again being clarified that at no point of time the lot size was reduced from Rs. 10,00,000/- by the undersigned. The on-the-spot proceeding report prepared is annexed herewith was **ANNEXURE-E (Colly)** along with the true typed copy of the report.

10. That however upon the insistence of the bidder Sh. Radhey Shyam Phawa and for maintaining the peaceful atmosphere, cheque was taken from him as well and the same is being submitted before this Ld. Court. The original cheque having number 741078 drawn on Yes Bank, Lajpat Nagar is annexed herewith as **ANNEXURE-F**. The entire process was recorded and the same is in the pen-drive, which pen-drive is enclosed alongwith this report as **ANNEXURE-G**."

63. The auction proceedings gave rise to objections from both the Appellant and Respondent No. 3. Respondent No. 3 had primarily objected to the manner in which the inspection of the subject property was conducted, as the Court Auctioneer had not permitted inspection of the subject property before commencement of the auction. It was further objected that the Court Auctioneer had failed to record in her report that the highest bids were made by persons residing on different floors of the subject property, thereby giving rise to a reasonable apprehension of bias.

64. The Appellant, in his objections, had challenged the fixation of the lot size at Rs. 10,00,000/-, contending that the same was fixed by the Court Auctioneer after the auction proceedings had commenced and the initial bids had already been taken in writing. It was stated that the Court Auctioneer had no authority to introduce a lot size of Rs. 10,00,000/-, and the same was contrary to the terms of the Proclamation of Sale, and therefore, the bid of Rs. 2,60,00,000/- recorded by the Court Auctioneer, as the highest bid, was invalid. The Appellant had further stated that his bid of Rs. 2,61,00,000/- was the last bid made before the auction concluded at 01:00 PM, and therefore, he was the highest bidder. It was further stated that the Court Auctioneer had not declared any successful bidder, despite the Proclamation of Sale requiring such declaration, and had accepted the cheque towards 25% of the bid amount from the Appellant. The Appellant had also relied upon the fact that he had deposited the entire sale consideration of Rs. 2,61,00,000/-. It was therefore the case of the Appellant that he ought to have been declared as the successful bidder and the sale certificate ought to have been issued in his favour. The Appellant had further stated that the fact that Respondent No. 2 had sought withdrawal of his bid and release of the 25% amount deposited by him, as recorded in the order dated 22.05.2025, the Appellant ought to have been declared as the successful bidder.

65. The learned Executing Court, while considering the objections and passing the impugned order, examined the terms of the Proclamation of Sale and the report of the Court Auctioneer. The learned Executing Court observed that the Proclamation of Sale authorised the Court Auctioneer to determine the amount by which the bids were to be increased. It was further observed that the lot size of Rs. 10,00,000/- had been announced during the auction and that the request of the bidders, including the Appellant, for reducing the same to Rs. 1,00,000/- had been declined. The learned Executing Court, accordingly, held that the bid of Rs. 2,61,00,000/- made by the Appellant, was not in conformity with the prescribed lot size, and therefore, the same could not be treated as the highest bid, merely because the same had been recorded and the cheque towards 25% of the amount was accepted by the Court Auctioneer.

66. At the same time, the learned Executing Court, *vide* the impugned order, declared Respondent No. 2 as the successful purchaser, being the highest bidder. While doing so, the learned Executing Court observed that till that date there was a cloud upon the auction sale and that the auction sale conducted on 06.05.2025 was yet to be confirmed. Respondent No. 2 was consequently granted fifteen days' time to deposit the entire bid amount with the learned Executing Court.

67. Learned counsel for the Appellant had submitted that the time period prescribed under Order XXI Rules 84 and 85 of the CPC, for deposit of 25% and the remaining 75% of the bid amount, respectively, is required to be reckoned from the date of auction, once the highest bidder has been identified, and non-compliance thereof would require re-auction. At this stage it is pertinent to note that the Appellant, in the objections filed before the learned

Executing Court, had never taken the ground of non-compliance of Order XXI Rules 84 and 85 of the CPC by Respondent No. 2, and the said ground has only been raised for the first time before this Court in the present appeal.

68. In the present case, the Court Auctioneer, in her report, had recorded the bid of Respondent No. 2 for Rs. 2,60,00,000/- as the highest bid. However, the Appellant had disputed the lot size fixed by the Court Auctioneer and had claimed that his bid of Rs. 2,61,00,000/- was the highest bid. The said dispute was thereafter placed before the learned Executing Court for adjudication.

69. It is pertinent to note that the Court Auctioneer had not declared Respondent No. 2 as the purchaser on 06.05.2025. It is further pertinent to note that the Appellant himself insisted that his cheque towards 25% of the bid amount, *i.e.*, Rs. 2,61,00,000/-, be accepted, which was accepted by the Court Auctioneer in order to maintain a peaceful atmosphere during the auction proceedings. The question as to who was the successful bidder, therefore, remained pending before the learned Executing Court and was decided only *vide* the impugned order, whereby Respondent No. 2 was declared as the successful purchaser.

70. In this regard, Order XXI Rule 84 CPC requires the purchaser to deposit 25% of the purchase money immediately after the declaration of the purchaser, while Order XXI Rule 85 CPC requires the balance purchase money to be deposited within fifteen days from the date of sale. Similarly, Clause 6 of the Proclamation of Sale requires the person declared as the purchaser to deposit 25% of the purchase money, followed by the balance 75% under Clause 7.

71. In this regard, reliance was placed by the learned counsel for the Appellant on the judgment of **Sunil Seth** (***Supra***), wherein it was held that the expression "at the time of purchase" refers to the time of auction, when the highest bid is knocked down, and the confirmation of sale takes place subsequently. However, the said judgment is distinguishable on facts. In the said case, there was no dispute regarding the identity of the purchaser, whereas, in the present case, the question as to who was to be declared as the successful purchaser itself remained pending before the learned Executing Court. Similarly, in **K.S. Siddappa** (***Supra***), the highest bidder had deposited the 25% of the bid amount, as required under Order XXI Rule 84 of the CPC, and the auction was thereafter closed, from which the Court inferred that the bidder had been declared as the purchaser.

72. Learned counsel for the Appellant had also placed reliance upon **Niranjan D. Woody** (***Supra***), wherein it was held that the deposit as mentioned under Order XXI Rule 84 CPC, is required to be made by the person declared to be the purchaser immediately after such declaration. However, the said judgment is distinguishable on facts, as there was no dispute therein regarding the person who had been declared as the purchaser. In the present case, the question as to who was to be declared as the successful purchaser itself remained pending before the learned Executing Court.

73. Thus, in the peculiar facts of the present case, where the identity of the successful purchaser itself remained disputed and Respondent No. 2 was declared as the successful purchaser only *vide* the impugned order dated 05.05.2026, the period for deposit of the balance 75% of the bid amount cannot be reckoned from 06.05.2025 merely because his bid had been recorded as the highest bid by the Court Auctioneer.

74. It is further pertinent to note that Respondent No. 2 deposited the balance 75% of the bid amount on the same day on which he was declared as the successful purchaser, and thus, the contention of the Appellant that Respondent No. 2 failed to comply with the time prescribed under Order XXI Rule 85 CPC cannot be accepted.

75. Learned counsel for the Appellant had further contended that the non-compliance of Order XXI Rule 84 and 85 of the CPC, would nullify the auction process, and in support of the said submission, he had placed reliance upon **Manilal Mohanlal Shah** (***Supra***), wherein it was held that the requirement of depositing 25% of the purchase money immediately upon declaration of the purchaser and the balance amount within 15 days, is a mandatory requirement and non-compliance of the same would render the sale invalid and non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as complete nullity.

76. There can be no doubt that non-compliance with the mandatory requirements of Order XXI Rules 84 and 85 of the CPC would vitiate the sale. However, in **Manilal Mohanlal Shah** (***Supra***), the purchaser had already been identified and the issue was with respect to the failure to comply with the requirement of deposit. In the present case, the period prescribed under the said provisions had not commenced on 06.05.2025, since the purchaser was yet to be declared by the learned Executing Court, and the said provisions are only attracted when the Court declares a purchaser.

77. Learned counsel for the Appellant had also relied upon the judgments in **Gas Point Petroleum India Ltd.** (***Supra***), **Sanjay Bhimrao Patil** (***Supra***), **Nand Lal** (***Supra***), **United Commercial Bank** (***Supra***), **Balram** (***Supra***), **Dasarla Koteswaramma** (***Supra***) and **Varghese** (***Supra***), to contend that failure to deposit the balance purchase money within the prescribed period would vitiate the sale. However, in the said cases, the purchaser had already been identified, and the issue before the Court was the failure of such purchaser to comply with the requirements as stipulated under Order XXI Rules 84 and 85 of the CPC. In the present case, the very question as to who was declared as the successful purchaser remained pending before the learned Executing Court, and therefore, the said judgments are not applicable in the peculiar facts and circumstances of the present case.

78. The Appellant had further contended that Respondent No. 2 failed to comply with the directions issued by the learned Executing Court *vide* orders dated 04.08.2025, 28.11.2025 and 11.02.2026, requiring him to deposit the balance bid amount, and such non-compliance by itself, rendered his bid liable to be rejected.

79. It is not in dispute that *vide* order dated 04.08.2025, the learned Executing Court had directed the Appellant and Respondent No. 2 to deposit the demand draft for their respective bid amounts within seven days, failing which their bids would be liable to be rejected. Respondent No. 2 did not comply with the said direction within the stipulated period. The subsequent orders dated 28.11.2025 and 11.02.2026 also required Respondent No. 2 to deposit the balance bid amount. However, Respondent No. 2 failed to deposit the said amount within the time granted by the learned Executing Court, and instead moved an application seeking rectification of the order dated 11.02.2026, which was dismissed *vide* order dated 11.04.2026 with a cost of Rs. 25,000/-.

80. However, it is pertinent to note that the aforesaid orders were passed at a stage when the dispute regarding the successful purchaser was still pending adjudication before the learned Executing Court. The learned Executing Court had itself observed *vide* order dated 28.11.2025 that the auction sale had not yet been confirmed and made absolute, and further had observed that the deposits made by the Appellant did not confer any right upon him to be declared as the purchaser in the auction sale. Thus, the effect of non-compliance with the aforesaid directions has to be considered in the backdrop of the fact that the question as to who was to be declared as the successful purchaser had not been decided by the learned Executing Court.

81. It is further relevant to note that the learned Executing Court ultimately declared Respondent No. 2 as the successful purchaser *vide* the impugned order dated 05.05.2026 and granted him time to deposit the entire bid amount, and Respondent No. 2 deposited the remaining 75% of the bid amount on the same day.

82. In these circumstances, mere non-compliance with the orders dated 04.08.2025, 28.11.2025 and 11.02.2026 cannot, by itself, be held to have resulted in rejection of the bid of Respondent No. 2, particularly when the learned Executing Court, after considering the respective claims of the parties, declared him to be the successful purchaser.

83. Learned counsel for the Appellant had further contended that the terms "sale" and "purchaser" as mentioned in Order XXI Rule 84 and 85 of the CPC, refer to the auction and the highest bidder, and in support of the same, reliance was placed upon **U. Nilan** (***Supra***). In the said case, the Hon'ble Supreme Court had considered the effect of an appeal against an order refusing to set aside a sale and observed that the sale would not become absolute during the pendency of an appeal. The said judgment is distinguishable on facts, as there was no dispute regarding the identity of the purchaser.

84. In the present case, the fact that the auction was conducted on 06.05.2025 cannot mean that Respondent No. 2 had acquired the status of purchaser on the same date. The terms of the Proclamation of Sale stated that there has to be declaration of the highest bidder as the purchaser, followed by deposit of 25% of the purchase money. It is pertinent to note that no such declaration was made on the date of auction, and the matter was placed before the learned Executing Court to determine the same.

85. Learned counsel for the Appellant had further argued that the Court Auctioneer had no authority to fix the lot size, and the Appellant's bid of Rs. 2,61,00,000/- ought to have been treated as the highest bid. In this regard, reliance was placed on **Rajiv Kumar Jindal** (***Supra***), to contend that the object of an auction is to secure the optimum realizable value of the property. There can be no dispute with the same; however, the said principle cannot be read to mean that a bidder can disregard the terms of an auction. In the present case, the Court Auctioneer had fixed the lot size of Rs. 10,00,000/-, and had specifically declined the request of the bidder to reduce the same to Rs. 1,00,000/-, as noted hereinbefore, as the same was inadequate. In these circumstances, the bid of Respondent No. 2 was rightly recorded as the highest bid, in accordance with the terms of the Proclamation of Sale. The mere fact that the Appellant had offered a higher amount of Rs. 2,61,00,000/-, would not entitle him to become the successful purchaser, as the same was not in accordance with the terms in the Proclamation of Sale.

86. Learned counsel for the Appellant had further relied upon **Shalimar Cinema** (***Supra***) to contend that the Court is required to exercise due care and caution while conducting a Court Auction, and the auction proceedings cannot be conducted in a casual manner. There can be no dispute with the aforesaid proposition; however, the facts of the said case are materially different from the present case. In the said judgment, the Auctioneer had adjourned the auction proceedings after receiving bids, without announcing the next date for continuation of the auction. When the auction was subsequently continued, some of the bidders who had participated earlier were unaware of the same and did not participate. It was in these circumstances that the Hon'ble Supreme Court found that fraud had been played by the decree-holder and the Auctioneer. The said judgment, therefore, has no application to the facts of the present case.

87. Furthermore, learned Senior Counsel for Respondent No. 2 has rightly placed reliance upon **Surendramohan Sarkar** (***Supra***), wherein it was held that sale of a property in an auction by an officer appointed by a Court, is nevertheless a sale by the Court itself, and such sale is incomplete until the Court formally accepts the bid and declares the purchaser under Order XXI Rule 84 of the CPC. Similarly, in the present case the sale through the auction was only confirmed *vide* the impugned order.

88. This Court is of the considered opinion that although the bid of Respondent No. 2 was recorded as the highest bid by the Court Auctioneer, he was declared as the successful purchaser only by virtue of the impugned order dated 05.05.2026, thereby making him the successful purchaser of the subject property.

89. In view of the aforesaid, the impugned order dated 05.05.2026 warrants no interference, and the same is upheld. Interim orders dated 21.05.2026 and 03.07.2026 passed by this Court, stand vacated.

90. The present appeal stands dismissed and disposed of, accordingly.

91. Pending application(s), if any, also stands disposed of.

92. Copy of this judgment be sent to the learned Executing Court, for necessary information.

93. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

AUGUST 25, 2026*/db/bsr*