

Baghla Briquette Industries v. Punjab Financial Corporation  
(R. N. Mittal, J.)

Order 41, rule 6(2) of the Code would apply after the sale in execution had been held. Mahajan J. in *Jangir Singh's case* (supra) did not follow the ratio in the above-said case on the ground that the observations were made by way of obiter. I am in respectful agreement with the observations of Mahajan, J.

(6) It, however, deserves mentioning that under sub-rule (1) the executing Court could not stop the disbursement of the decretal amount. At the most it could ask the decree-holder to furnish security for restitution of the amount for due performance of the decree of the appellate Court. In view of the position of law Mr. Bhandari, learned counsel for the petitioner, has stated at the Bar, that his client would furnish the security for the said purpose in the executing Court at the time of the withdrawal of the amount.

(7) For the aforesaid reasons I accept the revision petition, set aside the order of the executing Court and direct that the amount be paid to the petitioner on furnishing security for restitution to its satisfaction. The security, may be accepted after notice to the judgment-debtor. No order as to costs.

N.K.S.

Before R. N. Mittal, J.

BAGHLA BRIQUETTE INDUSTRIES,—Appellant.

versus

PUNJAB FINANCIAL CORPORATION,—Respondent.

F.A.O. No. 484 of 1983

March 16, 1985.

*Code of Civil Procedure (V of 1908)—Order 21 Rule 90—Limitation Act (XXXVI of 1963)—Article 127—Objections against sale filed within limitation as provided by Article 127—Sale, however confirmed before filing of objections—Objection application dismissed on the ground that sale already stood confirmed—Court—Whether empowered to confirm sale till the expiry of period of limitation for filing objections—Order of confirmation of sale and dismissal of objections—Whether liable to set aside.*

*Held*, that Order 21 Rule 90 of Civil Procedure Code, 1908 provides that where a property has been sold in execution of a decree, any person whose interests are adversely affected by the sale can apply to the Court to set aside the sale on the grounds specified therein. Article 127 of the Limitation Act, 1963 prescribes a period of 60 days from the date of sale for filing objections. The only inference that can be drawn from the said provisions is that the Court is not empowered to confirm the sale till the period of limitation for objections has expired. If the sale is confirmed before the expiry of the said period, a very valuable right of a party is taken away and it is left without any remedy if it wants to challenge the sale. That cannot be the intention of the Legislature. As such the order of confirmation of sale and dismissal of objection application is liable to set aside.

(Para 3)

*First Appeal from Order of the Court of Shri N. S. Bhatia, Additional District Judge, Bhatinda, dated 6th May, 1983 dismissing the application.*

A. L. Bansal, Advocate, for the Appellant.

H. S. Sethi, Advocate, for the Respondent.

#### JUDGMENT

*Rajendra Nath Mittal, J. (Oral).*

(1) This First Appeal has been filed against the order of the Additional District Judge, Bhatinda dated 6th May, 1983.

(2) Briefly the facts are that the property belonging to the appellant-judgment-debtor was got auctioned by the respondent. The auction took place on 17th August, 1982. Thereafter the Court confirmed the sale on 24th August, 1982. The appellant filed objections against the sale on 6th September, 1982 which were dismissed *vide* the impugned order on the ground that the sale had already been confirmed. The judgment-debtor has come up in appeal to this Court.

(3) The only question that arises for determination is, whether the sale could be confirmed before the expiry of period of limitation provided for filing the objections against the sale. Order 21, rule 90 of the Code of Civil Procedure provides that where a property has been sold in execution of a decree, any person whose interests are

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adversely affected by the sale can apply to the Court to set aside the sale on the grounds specified therein. Article 127 of the Limitation Act prescribes a period of 60 days from the date of sale for filing objections. The only inference that can be drawn from the said provisions is that the Court is not empowered to confirm the sale till the period of limitation for objections has expired. If the sale is confirmed before the expiry of the said period, a very valuable right of a party is taken away and it is left without any remedy if it wants to challenge the sale. That cannot be the intention of the Legislature. In the present case the objections were filed by the appellant within the prescribed period of limitation but the sale had been confirmed before the date of filing objections. Therefore, in view of the above observations, the orders of the confirmation of sale and dismissal of objection petition are liable to be set aside.

(4) For the aforesaid reasons I accept the appeal, set aside the order of confirmation of the sale and dismissal of the objection petition and remand the case to the executing Court to decide the matter afresh after taking into consideration the observations made above. No order as to costs.

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H.S.B.

Before R. N. Mittal, J.

SARABHAI MACHINERY,—Petitioner.

*versus*

M/S HARYANA DETERGENTS LTD.,—Respondent.

Company Petition No. 68 of 1982

April 11, 1985.

*Companies Act (I of 1956)—Sections 433 and 439—Companies Court Rules, 1959—Rule 102—Award rendered by arbitrator in favour of creditor and against Company—Judgment of the Court making the Award rule of the Court—Notice served under section 434 by Creditor on Company before matter referred to arbitrator—Application filed by creditor for substituting it as petitioner in petition for winding up of the Company filed by another creditor—No efforts made to execute the judgment of the court—Petition for winding up in such situation—Whether maintainable—Creditor*