

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.231 of 2011

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1. Jinendra Chand Suchanti S/o Late Bimal Chand Suchanti R/o Kothee, Mohalla - Chaukahndi Par Bihar Sharif, P.O. Bihar Sharif, District – Nalanda.
 2. Smt. Kanika Phophalia W/o Sohan Mal Phophalia R/o Phophalia House, Rasta Hanuman Ji Ka Jouhari Bazar Jaipur Rajasthan .
 3. Smt. Manjula Oswal W/o Sri Binai Chand Oswal R/o 33 / 20 Chopritola, Phulwaligali Chawk, Lucknow.
 4. Smt. Anjula Gandhi W/o Ajit Chand Gandhi R/o K - 14 Batkri Gali, Banaras
 5. Smt. Aparna Nahar W/o Sri Amit Nahar R/o 22 Indian Mirror Street, Kolkatta.

... .. Petitioner/s

Versus

1. Arbind Kumar S/o Late Rameshwar Prasad.
2. Manoj Kumar S/o Late Rameshwar Prasad.
Residents of Mohalla – Bharaopar, Town & P.S. Bihar, District Nalanda.
3. Sri Pradeep Kumar S/o Sri Tapeswar Lal, Resident of Mohalla – Kharandi, Town & P.S. Bihar, District – Nalanda.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Raj Kishore Prasad Singh, Advocate.
		Mr. Bal Bhushan Chaudhary, Advocate.
For the Opposite Parties	:	Ms. Meeta Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 24-11-2023

Heard learned counsel for the parties and perused the record.

2. This Civil Revision Application is directed against the judgment dated 27.09.2011 passed by learned Additional District Judge F.T.C. No.1, Nalanda at Bihar Sharif in Misc. Appeal No.07 of 1995 filed by the petitioners against



the order dated 15.05.1995 passed by learned Sub-Judge -I, Biharsharif in Misc. Case No.50 of 1985 by which the said Misc. Appeal has been dismissed.

3. Petitioners are heirs of judgment debtor and Opposite Party Nos.1 & 2 are heirs of decree holder. Opposite Party No.3 is auction purchaser.

4. The brief facts of the case are that grandfather of opposite party nos.1 & 2 Sri Khaderan Lal was a money lender who advanced loan to the grandfather of the petitioners namely Jawahar Lal Suchanti on the basis of a demand promissory note for Rs.3,000/- dated 26.07.1969. The said Khaderan Lal filed Money Suit No.410 of 1972/ 20 of 1978 for realization of the loan amount of Rs.3,000/- against the father of petitioners as their grandfather by that time had died. The said money suit was dismissed on contest by the learned Munsif, Biharsharif. Thereafter, the plaintiff preferred Money Appeal No.10 of 1979 which was decreed by the Appellate Court and the Appellate Court allowed the appeal with cost and held that plaintiff is entitled to the relief claimed and prepared the money decree for Rs.3,354.40/- with cost (which was amended and included *pendente lite* and future interest till realization). The decree holder for realization of the said money decree filed the



Execution Case No.2/83(38/85) against the Judgment Debtor.

5. The Judgment-debtor filed a petition dated 04.12.1985 under Section 11 of the Bihar Money Lenders Act and Section 47, 151 and Order XXI Rule 90 C.P.C. in the Court of Sub Judge I, Bihar Sharif which was registered as Misc. Case No.04 of 1985 and renumbered as Misc. Case No.50 of 1985 after transfer to the Court of IVth Additional Sub Judge, Bihar Sharif. It is prayed therein to set aside the auction sale held on 28.11.1985 on various grounds including that the land in question is residential house of petitioners, no notice of the process was served upon them, the decree was wrongly amended, the auction was held on lower price, the decree holder committed fraud on the Court. The opposite party filed the rejoinder and stated that the petitioners had full knowledge of all the process of execution case and the attachment and auction sale was done properly. The executing Court cannot go behind the decree. The applicant examined five witnesses and referred some documents in support of his case. Opposite party also examined seven witnesses and adduced documentary evidence to say that the auction sale is valid.

6. The learned Subordinate Judge, Bihar Sharif, Nalanda on the basis of material on record held that the



applicant has admitted that he has knowledge of each and every stage of the suit and execution case and then he did nothing. He has got many opportunity to deposit decretal amount but always avoid it and lastly he has filed Misc. Case and the Court further held that there is no ground to disbelieve the version of process server and others. Entire cross-examination of the petitioners will show that he has filed this case only to delay the matter.

7. The father of petitioners had died on 17.07.1994 during the pendency of Misc. Case No.50/85 and in his place, the petitioners were substituted. The original decree holder Sri Khaderan Lal died before filing of the said Misc. Case and his son Rameshwar Prasad was made opposite party no.1 in the Misc. Case but he also died and in his place his two sons, i.e. the opposite party nos.1 & 2 were substituted.

8. The Judgment-debtors/ petitioners claimed in the said execution case that the decree holder put the valuable property of petitioners on sale without observing the provision of law for fixing the value of the same for which the petitioners filed objection and after hearing both the parties, the Court raised the value of the said property amounting to Rs.12,000/-.

9. The said Misc. Case No.50 of 1985 was



dismissed vide order dated 15.05.1995 by learned Sub Judge-I, Bihar Sharif. The petitioners preferred Misc. Appeal against the said order dated 15.05.1995 passed in Misc. Case No.50 of 1985 before the learned District Judge, Nalanda at Bihar Sharif vide Misc. Appeal No.07 of 1995 which was dismissed with cost by the impugned judgment dated 27.09.2011 and held that case of appellant has not proved at all.

10. Learned counsel for the petitioners has submitted that the valuable and costly property of petitioners was put on auction sale on a very low amount deliberately to cause irreparable harm and injury to the petitioners with calculated design. The decree in question which was put into execution is bad in law and inexecutable as the interest amount exceed the principal amount of loan. He has further submitted that there are material irregularity committed in publishing and conducting the auction sale causing irreparable loss and injury to the petitioners. Attachment notice or sale proclamation were not served upon the petitioners at the spot and on prescribed forms. He has further submitted that the alleged auction sold land is part and parcel of the residential house and no peon or any process server went on the spot as entry on the said land is not physically possible unless seeking permission to enter into



the residential house of the petitioners. Accordingly, report of the process server/ peon is collusive, bogus and incorrect and the process server has not sworn proper affidavit in this regard.

11. He has further submitted that as per Section 11 of the Bihar Money Lenders Act, 1974 maximum amount which a money lender may be entitled to realize from the debtor on account of principal and interest, in case of loan in cash more than double of the amount of loan advanced by him, or in case of a loan in kind, one and half time the amount of the loan advanced by him. He has further submitted that since a money lender is not permitted by Sub-section (1) to realize from a debtor on account of principal as well as interest more than double of cash amount of the loan, a decree cannot be passed in excess of this amount. The term 'interest' is not limited to past interest only and it is therefore argued that the future interest also must be subject to the restriction.

12. On the other hand learned counsel for the opposite parties has submitted that learned Court below has rightly dismissed the said Misc. Case by reasoned judgments considering the material on record, which requires no interference by this Court. He further submitted that the law is well settled that the Court has power to grant interest including



future interest. The petitioners had full knowledge of the execution case and proper notice was served upon them with respect to attachment and proclamation of auction sale. He has further submitted that petitioners have no merit in this case and they are delaying the execution case of year 1983 and is liable to be dismissed.

13. Section 7 of the Bihar Money Lenders (Regulation and Transaction) Act, 1939 said that notwithstanding any law or agreement to the contrary, no court should in any suit brought by a money lender pass a decree for an amount of interest 'for the period preceding the institution of the suit' which altogether with any amount already realized as interest is greater than the principal. The restriction applies only to the past interest.

14. Section 11 of the Money Lenders Act, 1974 is quoted below:-

11. Maximum amount which a money lender may realise from the debtor on account of principal and interest. - (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any agreement, it shall not be lawful for a money-lender to realise from a debtor on account of principal and interest, in case of loan in cash more than double of the amount of the loan advanced by him, or in case of a loan in kind, one and half time the amount of the loan advanced by him.



(2) No Court shall in any suit brought by a money lender before or after the commencement of this Act or in any appeal or proceedings in revision arising out of such suit pass a decree for the amount which together with interest for the period preceding the institution of the suit, including any amount already paid towards principal or interest, either through the Court or otherwise is in case of loan in case more than double the amount of the loan advanced, or in cash more than double the amount of the loan advanced, or in case of a loan in kind more than one and a half times the amount of the loan advanced, or if the loan is based on a document, in case of a loan in money, more than double the amount of the loan mentioned in or evidenced by such document or, in case of a loan in kind more than one and a half times the amount of the loan mentioned in or evidenced by such document.

15. In this regard, this Court on reference by Division Bench in **Rulia Devi and Ors. Vs. Raghunath Prasad** reported in **AIR 1979 Patna 115** in paragraph no.12 held as under:-

“12..... that Sub-section (1) does not deal with the duty of the court at all and speaks only of what the money lender himself ought to do. Since the question as to amount of decree which can be passed in a suit has been dealt with separately in Sub-section (2), the intention of legislature appears not to apply the Sub-section (1) to the powers of a Court in a suit. The callous treatment the money lenders of this State were giving to the debtors in the past is notorious and this they did not even without going to court. The object of the Sub-section (1) appears to forbid them from so doing. Naturally the ‘interest’ referred to in this Sub-section could not be put in further divisions as



past, pendente lite and future interest, which terms can be understood only with reference to a suit. If a money lender contravenes the provisions of the first Sub-section, he may be penalized under Section 34 of the Act. He cannot extort interest beyond the limit prescribed by Sub-section (1) and escape the consequences by merely avoiding to go to court. I am, therefore, of the view that Sub-section (1) does not apply to a suit and does not limit the power of a Court to pass a decree with respect to interest which is dealt with under Section 34 and Order 34 of the Civil Procedure Code. The Money Lenders Act is dealing with such interest only which may be accruing on the loan under the agreement between the debtor and the creditor or under mercantile usage. Future interest is awarded by Court under Section 34 of Civil Procedure Code and is really in the nature of damages granted on account of the plaintiff being kept out of the money due to him under the decree, and is not, strictly speaking, interest on loan. The award of further interest is purely a matter of statutory power under the Civil Procedure Code and so in the case of pendente lite interest, and are not controlled by Section 11 (1) of the Money Lenders Act. This interpretation, besides being a reasonable one, does not render the Sub-section (2) ineffective or meaningless.”

16. On perusal of the scheme of execution of decrees as is found in order 21, it appears that in case of a money decree the court has Jurisdiction to hold sale of Judgment – debtor’s property. On application for execution by the decree-holder for attachment and sale of the judgment-debtor’s immovable property specified in the application; is made within two years the court proceeds to direct attachment of the said immovable property and if it is after lapse of two



years or it is against the heir or legal representative the Court first issue and serve notice under Order 21, Rule 22 and then proceeds to levy the attachment. Such attachment of immovable property is ordered under Order 21 Rule 54. The attachment being in the nature of prohibitory order directed and served upon the judgment debtor or his legal representative preventing him from transferring or charging the property in any way and all persons from taking benefit from such transfer or charge. When attachment under Order 21 Rule 54 takes place, the judgment debtor or his legal representative is informed of the proceedings that are initiated by the decree-holder for realizing the dues by way of attachment and sale of the property. If even after such notice of attachment, the order of the court with respect to the payment of the decretal amount is not complied with by the Judgment-debtor, decree holder makes an application for sale of the property under Order 21 Rule 64.

17. Then comes the second stage of drawing up and settlement of proclamation of sale under Order 21 Rule 66 and Sub-rule (2) of Rule 66 provides that such proclamation shall be settled by executing court after notice to the decree-holder and judgment debtor. Sub-rule (3) provides that alongwith the application for order for sale the decree holder or his agent has



to furnish a signed and verified statement containing so far as known to him the matters required by Sub-rule (2) to be specified in the proclamation.

18. The main purpose of notice under Rule 66(2) is to give the Judgment-debtor an opportunity to dispute the correctness of the particulars furnished by decree- holder under Sub-rule (3) and to see that the correct or proper particulars furnished by the decree- holder under Sub-rule (3) and see that the correct or proper particulars are mentioned in the proclamation of sale. Rule 67 prescribe the mode of making and publishing the proclamation and it provides that every proclamation shall be made and published as nearly as possible in the manner in which attachment is effected under Rule 54 Sub-rule (2). Under Rule 67 (2) such proclamation is required to be published either in Official Gazette or in a local newspaper. The proclamation is required to be published by beat of drum, by affixing a copy thereof on a conspicuous part of the property sought to be sold and where the property happens to be a land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

19. These provisions pertaining to publication of proclamation clearly suggest that apart from individual notice



that is required to be served upon Judgment-debtor for settlement of proclamation under Rule 66 (2), even otherwise the Judgment-debtor is apprised of the fact that his property is proclaimed to be sold by reason of the manner in which the proclamation is directed to be published. In other words even if individual notice under Rule 66 (2) is not served upon Judgment-debtor, the Judgment-debtor is apprised of the fact that such proclamation has been drawn up and issued by reason of its publication in the manner provided and even thereafter within 30 days that must elapse before the sale is held, there is nothing to prevent the Judgment-debtor to approaching the court for rectifying any serious or grievous mistake that might have crept in the proclamation already published and nothing prevent the court if it feels that rectification is necessary to direct the issuance of a rectified or a fresh proclamation.

20. In the light of the above said scheme pertaining to attachment and sale of Judgment-debtor's property, it will be clear that the Judgment-debtor or his legal representative has ample opportunity to object the attachment and/ or sale of the property and it is also clear that even if individual notice under Rule 66 (2) is not served upon him, he is not prejudiced, inasmuch as, as a result of publication of the proclamation of



sale in the prescribed manner he has notice of the settled proclamation and if necessary he can approach the executing court to get the proclamation altered or rectified for any serious mistake or infirmity before the actual sale takes place.

21. The general purpose served by the relevant provisions under Order 21 is realization of dues made payable by the command of the court. The provision as to notice contained in Rule 66 (2) have to be regarded as directory and not mandatory and non- service of notice upon Judgment-debtor thereunder will only render the subsequent sale voidable at the instance of the Judgment-debtor, who will have to prefer an application for setting aside the sale under Order 21 Rule 90 of Civil Procedure Code and he can only succeed on proving substantial injury to him. The application fall under Order XXI Rule 90 of C.P.C. not under Section 47 and as such the same is governed by Article 127 of the Limitation Act.

22. Even otherwise also, not only grave injustice would be caused to auction purchasers but even the administration of Justice would also be hampered inasmuch as Court auctions would not attract any bidder on entertaining such frivolous application having no merit and the main object sought to be achieved by the attachment, and sale of property



will also be defeated. It is unfortunate that the execution case of the year 1983 with respect to money decree is still pending in which sale took place on 08.11.1985.

23. In the present case, the learned courts below considering the documents, evidence and conduct of the parties held that the petitioners/ Judgment-debtor had knowledge of each and every stage of the execution case and there is no ground to disbelieve the version of process server and others. The petitioners have filed the Miscellaneous Case only to delay the execution case. The impugned judgment is a reasoned judgment and finding is based on the material on record.

24. As discussed above, on the objection of the petitioners and after hearing both the parties, the court raised the value of the said property amounting to Rs.12,000/-. The sale is not in contravention of Section 11 of Bihar Money Lenders Act, 1974. There is also proper compliance of the provision of Order XXI Rule 66 of Civil Procedure Code in holding auction sale in execution proceeding and application of petitioner under Order 21 Rule 90 of Civil Procedure Code has rightly been dismissed as the petitioners have failed to prove any material irregularity or fraud in publishing and conducting the sale.

25. In view of the aforesaid facts and circumstances



and the law discussed above, this Court does not find any valid reason for interference in the impugned judgment. The Civil Revision is devoid of merit and is liable to be dismissed.

26. This Civil Revision is, accordingly, **dismissed**.

27. The Interlocutory Application(s), if any, in this Civil Revision stands disposed off.

28. The Executing Court is directed to conclude the proceeding expeditiously preferably within 6 months of receiving/ production of this judgment. The lower court records of this case be returned to the court concerned forthwith.

(Sunil Dutta Mishra, J.)

Ritik/-

AFR/NAFR	AFR
CAV DATE	12/10/2023
Uploading Date	24/11/2023
Transmission Date	NA

