



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 1552 OF 2025
WITH
WRIT PETITION NO. 1577 OF 2025**

Narendra s/o. Vishwanath Jadhav

VERSUS

M/s. Challani Ginning & Pressing Factory & Anr.

Mr.A.D. Kasliwal, Advocate for the petitioner.

Mr.P.F. Patni, Advocate for respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 05.02.2025

P.C. :-

01. Both these Writ Petitions are by a Judgment Debtor [for short "JD"] arising out of same execution proceeding and therefore both the Writ Petitions are taken together.

02. Writ Petition No. 1552 of 2025 is against an order passed by the learned 5th Joint Civil Judge, Senior Division, Aurangabad dated 03.05.2024, rejecting an application of the petitioner under Order 21 Rule 72(3) of the Civil Procedure Code [for short "CPC"].

03. Writ Petition No. 1577 of 2025 is against an order passed by the same Court dated 04.01.2025 allowing an application of the Decree

Holder [for short "DH"] for confirmation of sale.

04. The facts, in short, are that the respondents had filed a suit against present petitioner for recovery of amount. The suit was decreed directing to pay an amount of Rs. 1,94,66,000/-. The decree was passed on 24.07.2017. An appeal bearing First Appeal No. 38 of 2018 was preferred against the said decree, however, same came to be rejected on 14.01.2019. The decree stood confirmed. Pursuant to the decree, the respondents filed Special Darkhast No. 32 of 2017 in the Executing Court. Time and again present petitioner challenged various orders passed in the execution. All challenges, however, came to be turned down.

05. Ultimately, property of the petitioner was put for auction. The respondents filed an application under Order 21 Rule 72, seeking leave to take part in the auction proceedings on 18.12.2018. Said application came to be allowed on 25.12.2018 by the Executing Court. The petitioner, thereafter, filed application under Order 21 Rule 72(3) of the CPC and prayed for setting aside the auction.

06. On 04.07.2023 and 05.07.2023 the auction was conducted.

Pursuant to the order allowing the DH to take part in auction proceeding, the respondents purchased the property in auction. The auction became final. The petitioner at the stage of confirmation of sale, filed an application on 18.10.2023 for setting aside the auction, contending that there is no express provision granted by the Court as required under sub-rule (3) of Rule 72 of Order 21 of the CPC. The respondents filed their say by contending that no objection was raised and prayed for rejection of the application.

07. Learned Court below rejected the application Exh.190 filed by the petitioner. The petitioner has, thus, come to this Court by filing Writ Petition No. 1552 of 2025.

08. So far as Writ Petition No. 1577 of 2025 is concerned, the respondent – DH filed an application below Exh.194 praying for confirmation of sale dated 05.07.2023. The Court below directed to grant confirmation of sale certificate of the attached property, as per Order 21 Rule 94 of the CPC by order dated 04.01.2025 and same is challenged in this petition.

09. Learned Advocate Mr. Kasliwal for the petitioner vehemently

argued that permission to the DH to participate in bid was not expressly granted as required under the Rule. A cryptic order was passed without showing application of mind and giving detailed reasons. The said order cannot be taken to be an order granting express permission to the DH. When any application is moved by a party, the Court has to give hearing to the JD. No proper offset price was fixed. The participation of the respondent in same, itself is illegal amounting to fraud played on the Court as mandatory provision is violated. The Court did not pass order granting permission with caution. In such circumstances, the application of the petitioner ought to have been allowed, setting aside the auction sale. So far as order confirming the sale is concerned, he argued that earlier application of the DH for finalization of the sale and issuance of sale certificate was rejected by the Court by order dated 17.07.2023 and therefore second application was not maintainable, as barred by section 11 of the CPC by *resjudicata*. The respondents did not deposit amount of 25% on the date of sale as required under Order 21 Rule 85 of the CPC and claimed set-off. He deposited an amount of Rs.43,98,903/- on 17.07.2023. The amount was deposited by Demand Draft and not in cash. The amount ought to have been deposited on or before 18.07.2023. The depositing Demand Draft cannot be said to be a deposit. The amount required for registration of sale-certificate is not

mentioned and thus, there is non-compliance of Order 21 Rule 92 of the CPC and for this reason, the sale cannot be confirmed.

10. Learned Advocate for the petitioner in support of his submissions in respect of setting aside sale, relied upon following judgment :-

- i) **Lal Chand Vs. VIIIth Addl.District Judge and Ors., AIR 1997 SC 2106.**
- ii) **M. Varadarajulu Pillai Vs. Gendapodinanniar and Ors., AIR 1950 Madras 392.**
- iii) **K. Suresh Babu Vs. K. Balasubramaniam & Anr., AIR 1981 Madras 1.**

. He further relied upon following judgments :-

- iv) **Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh & Ors., AIR 1995 SC 2195.**
- v) **M/s. Progressive Industrial Enterprises Vs. Bank of Baroda & Ors., AIR 1989 MP 199.**
- vi) **G. Venkata Ramana Naidu Vs. K. Venkataramana Reddy & Ors., AIR 2019 AP 21.**

11. Learned Advocate Mr. P.F. Patni for respondent No.1 submits that the applications were clearly filed for protracting execution proceeding. The suit was decreed in 2017. Twice the property was put to auction. However, no purchaser came forward. In that view, the

respondent No.1 sought permission to take part in the auction purchase. The application was rightly allowed by the Court. The order, though was passed in 2018, there is no direct challenge to the order and the order has thus become final. Once permission is granted, the sale remains in force. There is no requirement of a person to take express permission every time when the auction is to be held. The petitioner had filed application Exh.187 raising similar objections. The said application was rejected. The petitioner did not challenge the said order. Now no different view can be taken. After the order passed on Exh. 186, the sale became final. The petitioner, thereafter filed application below Exh.189 for similar purpose. The petitioner has not shown that any prejudice is caused to him by participation of the respondent-DH in the auction. The recovery amount is now Rs.2.68 crores and some odd amount. The offset price of the property was fixed by leading evidence by the parties. The order fixing offset price is not challenged. The DH has purchased the property for Rs.2,90,11,000/-, which is more than offset price fixed by the Court. There is clear provision in Rule Order 21 Rule 72(2) of the CPC that the amount of decree is to be adjusted in case the DH participates in the proceeding. There was no objection raised at that stage. Now, objection is raised only when the Court is to issue a sale certificate, which in-fact is only a ministerial act. Filing of the petition is

a desperate attempt on the part of the petitioner. Writ Petition No. 1552 of 2025 suffers from delay and laches, as the order is passed in May, 2023 and the petitions are filed after completion of sale and issuance sale confirmation certificate.

12. So far as Writ Petition no. 1577 of 2025 is concerned, learned Advocate Mr. Patni for respondent No.1 submits that when the DH himself takes part, there is no requirement of deposit of amount, as the amount of decree is to be adjusted. The requirement of amount to be paid in cash is not required, as the DH has deposited Demand Draft, which is issued only after depositing amount with bank. It is only in case when bid is by third party, such a party is required to deposit the amount. The DH had filed application Exh.184 for accepting the amount of difference and the said amount was tendered by a Demand Draft. In the said application, the DH had given details of registration charges etc. Though the execution is pending since 2017, the petitioner is coming at the fag end when the sale certificate is issued and possession is to be handed over. The decree stood confirmed and has attained finality. He, thus, submits that the petitions be dismissed with heavy costs.

13. It is undisputed that the execution is pending since 2017. The

application of the DH praying for permission to participate in the auction is is allowed long back in 2018. So far as grant of permission is concerned, it only needs to be considered as to whether said permission can be said to be express permission as required under Order 21 Rule 72 (1) of the CPC and whether said permission is hit by Order 21 Rule 71 (3) of the CPC.

14. As regards Writ Petition No. 1577 of 2025, the question is as to whether executing Court is right in allowing the application confirming the sale and in issuing sale certificate.

15. To decide above questions, it is first necessary to consider provisions of Order 21 Rule 72 of the CPC, which is quoted here-in-below.

"72. Decree-holder not to bid for or buy property without permission-

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) **Where decree-holder purchases, amount of decree may be taken as payment.** - Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder."

16. It is further required to consider judgment before coming to a conclusion.

. In the case of **Lal Chand (supra)**, the Hon'ble Apex Court considered provisions of Order 21 Rule 72 of the CPC. In that case the DH had sought permission to participate in the auction proceeding. From the judgment it appears that there was no express permission obtained by the DH and in that view it was held that there is no question of legality of the auction sale. In the facts of that case the Hon'ble Apex Court set aside sale as illegal.

. In the case of **Rao Mahmood Ahmed Khan (supra)**, the Hon'ble Supreme Court was considering section 285-D of the U.P. Zamindari Abolition and Land Reforms Rules 1952, which requires deposit of 25% of the bid amount immediately. Said provision is held mandatory. In that case the auction purchaser did not deposit 25% of the amount on the date of auction and in that view of the matter, the

auction sale was held to be illegal. While considering the provisions of section 284-D of the said Act, the Court also considered the provisions of Order 21 Rule 84, 86 and 96 of the CPC, which are corresponding to the provisions of Sections 285-D and 285-E of the said Act and the rules under the said Act. In the said case auction purchaser was a third person. It was, therefore, necessary to deposit the amount. In the present case, it is the DH himself, who purchased the property in auction.

. In the case of **M. Varadarajulu (supra)**, the Madras High Court has held that the power to grant leave to decree holder to participate in a bid must be cautiously exercised. Unless there is satisfaction of the Court from the circumstances shown, no permission be granted. It is one of the submissions of learned Advocate Mr. Kasliwal that when the application for participating in bid was filed, it was not accompanied by an affidavit. He, thus, submits that in the case of **M. Varadarajulu (supra)**, the permission granted to the DH to participate in bid was found with material irregularities and was set aside.

. In the case of **K. Suresh Babu (supra)**, the DH himself purchased the property without obtaining Court permission. In that view, the sale was set aside.

. In the case of **Progressive Industrial Enterprises (supra)**, after the auction sale, deposit of 1/4th of the purchase price

was not deposited in cash. In that case, for non-compliance of the deposit of 1/4th amount in cash, was held to be mandatory and on that count the sale was declared illegal.

. In the case of **G. Venkata Ramana Naidu (supra)**, it is held that provisions of Order 21 Rule 85 of the CPC are mandatory. The auction purchaser is bound to deposit full purchase amount including the value of stamp duty for drafting sale certificate. In that case, there was failure to deposit the value of stamp duty and in that view the sale was treated as nullity. The another question was about extension of time to deposit the amount, however, said question does not arise in the present case.

17. From all the above judgments it is clear that (i) DH must obtain prior permission to take part in the auction proceeding by himself or through any other person. (ii) Deposit of 25% or 1/4th of the amount of bid on the same day is mandatory. The rule contemplated is to deposit the amount by cash and not by cheque. The deposit by cheque is not valid tender under Rule 285-D. (iii) Power to grant permission to take part in the bid to the DH must be cautiously exercised. (iv) When the DH purchases a property himself or through another person without permission, the sale is liable to be set aside. (v) No extension to deposit

the purchase value can be granted. The auction purchaser is bound to deposit full purchase amount including value of stamp duty.

18. Learned Advocate Mr. Patni for respondent No.1 relied upon judgment in the case of **Jaswantlal Natvarlal Thakkar Vs.Sushilaben Manilal Dangarwala & Ors. reported in 1991 AIR SCW 206.** In that case, objection was raised on the ground that the permission was granted to the DH to participate in bid and that too at a price lesser than offset price. The permission was granted without notice to the JD. In that case it was held that the objector has to show that thereby substantial injury is caused to him as a consequence of alleged irregularity. In that case, it was held that since the objector failed to show such substantial injury, the petition was not entertained.

19. Considering the above legal position and considering the facts of this case, this Court finds that the applications filed by the petitioner is nothing but a desperate attempt to prolong the execution. Admittedly, the property is already attached and is under the control of the Court. The petitioner at the most, at this stage, can point out illegality in conducting auction sale. From the facts of the case, however, it does not appear that any irregularity is committed while conducting the auction

sale. The permission was sought by the original plaintiff/deGREE holder and the same was granted by the executing Court allowing him to participate in the sale proceeding. Order 21 Rule 72 of the CPC does not require any hearing or opportunity to be given to the judgment debtor. The provision appears to be only to see that there is no disadvantage to the judgment debtor. It was, therefore, necessary for the petitioner to show that he is put to any disadvantage by allowing the DH to take part in the auction proceeding. No such prejudice is pointed out.

20. So far as deposit of the amount is concerned, in view of Rule 72 sub-rule (2), it is clear that when the decree holder takes part in the auction sale, the amount of decree is to be adjusted. In such case, there is no requirement of actual deposit of the amount. Said condition is only when an auction purchaser happens to be a third person. So far as deposit of amount by Demand Draft is concerned, the petitioner's contention is that the same cannot be said to be a deposit in the eyes of law. In the case of **Progressive Industrial Enterprises (supra)**, it was case that the purchased had deposited cheque with the bank and in that view it was held that said cannot be termed to be deposit of the amount. In the present case, it was a Demand Draft, which is issued only after deposit of the amount in the bank. This Court, therefore, does

not find any substance in the argument of the petitioner on this count also.

21. So far as the amount of stamp duty is concerned, the learned Advocate for the respondent has produced on record copy of Exh.184 i.e. application by the DH/purchaser for issuing sale certificate. Said application shows that the DH has calculated total amount to be adjusted, cost of execution of stamp duty, copying charges, pleader's fees etc. However, this fact is suppressed by the petitioner in the petition. Coming to the order passed by the learned Trial Court, this Court finds that the learned Trial Judge has considered provisions of Order 21 Rules 65 and 72 of the CPC in detail. It is considered that the Court had already allowed the adjustment of decretal amount and had accepted difference amount to satisfy the auction amount. The auction was conducted by the bailiff. While deciding application below Exh.186, this fact is also suppressed by the petitioner. The petition, thus, suffers even from the suppression of material facts. Though the court had already considered Exh.186, again similar type of application came to be filed stating that the said application was under Order 21, Rule 90 of the CPC. Thus, looking to these facts, this Court hardly finds anything to interfere with the impugned order. The learned Executing Court has not

committed any error while passing the order. The petition by the petitioner is only an attempt to prolong execution of decree. Both the petitions are, therefore, fit to be dismissed with costs. Hence, following order :-

ORDER

- (i) Writ Petition No. 1552 of 2025 is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand).
- (ii) Writ Petition No. 1577 of 2025 is dismissed with costs of Rs. 25,000/- (Rupees Twenty Five Thousand).
- (ii) The aforesaid costs shall be paid to respondent No.1- Decree Holder.

[KISHORE C. SANT, J.]