

In the Supreme Court of Bangladesh
 High Court Division
 (Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Emdadul Huq
Civil Revision No. 1187 of 2010.

In the matter of:

Md. Mukshed Ali

.....Petitioner.

Versus.

Manager, Rajshahi Krishi Unnayan Bank,
 Ekarchali Branch, Rangpu.

.....Opposite party.

None appears.

..... For the petitioner.

Mr. Md. Abdul Malek, Advocate.

..... For the opposite party.

Hearing and Judgment on: 01-12-2014.

The legal issue raised in this Civil Revision is whether the Execution Court can, in an Artha Jari Case, inquire about the propriety of the price quoted in an auction sale process and reject the highest bid, if not satisfied about the sufficiency of the price.

In Artha Jari Case No. 15 of 2008, the learned Joint District Judge 1st court, Rangpur, as the Executing Court, on the basis of the Report of the local Sub-Registrar, passed order dated 20-06-2008, and thereby rejected the highest bid in an auction sale and directed a fresh auction.

But the learned District Judge, by his Judgment and order dated 02-085-2009 passed in Artha Rin Appeal No. 01 of 2008, set aside the said order of the Executing Court and accepted the bid.

Earlier a Rule was issued about sustainability of the said impugned Judgment passed in Appeal.

The opposite party, being Rajshahi Krishi Unnayan Bank, Ekarchali Branch, Rangpur obtained a decree of Tk. 3,71,750/- in Artha Rin Suit No. 15 of 2008. The decree was put to execution and auction sale of the mortgaged land measuring 3.71 acres was held in the above noted Artha Jari Case. The highest bid submitted was Tk. 4,01,000. Then the Executing Court called for a report from the local Sub-Registry office about price of the land. The Sub-Registrar reported that the proper price should be Tk.9,00,800/-.

In view of such report the Executing Court by order dated 26-06-2008 refused to accept the bid, rejected the bid and directed a fresh sale process. The decree holder Bank preferred Appeal against that order. After contested hearing, the learned District Judge allowed the Appeal and set aside the order of the Executing Court and accepted the highest bid.

At the hearing of this Revision, none appears for the judgment debtor (petitioner). However, in the revisional application, he has taken the ground that the appellate court failed to consider the legality and propriety of the order for a fresh auction as directed by the Executing Court on the basis of the report of the Sub-Registrar.

Mr. Md. Abdul Malek, the learned Advocate for the decree holder bank (opposite party) submits that the appellate court legally and properly passed the impugned judgment accepting the highest bid in consideration of the fact that the judgment debtor himself did not raise any objection to the price quoted by the bidder.

Mr. Md. Abdul Malek, the learned Advocate, further submits that the trial Court has no jurisdiction to call for a report from the Sub-Registrar about the price of the land quoted in an auction and therefore no interference is necessary in this Revision.

Evidently the legal issue raised in this case is the legal authority of the execution court to ascertain the propriety of price quoted in an auction sale in an Artha Jari Case.

The proviso to section 33(2) of the Artha Rin Adalat Ain, 2003, as it was before the amendment introduced by the Amending Act of 2010, contains a clear reply to the legal issue. It empowers the Executing Court to accept or reject a price quoted in an auction process in the following words:

“৩৩। নিলাম বিক্রয়। (১)

(২)

তবে শর্ত থাকে যে, এই উপ-ধারার অধীন দরপত্রে সম্পত্তির প্রস্তাবকৃত মূল্য অস্বাভাবিকভাবে অপরিষ্কৃত বা কম প্রতীয়মান হইলে, আদালত, দরপ্রস্তাব বাতিল করিতে পারিবেন”।

It is noted that sub-section (2ga) of section 33 as introduced by the Amending Act, 2010 also contains provision similar to the above proviso.

The expression “মূল্য অস্বাভাবিকভাবে অপরিষ্কৃত বা কম প্রতীয়মান হইলে” occurring in the proviso as quoted above casts a clear legal duty upon the executing court to be satisfied about the propriety of the quoted price(s), even if the Judgment debtor is silent about the price. The mechanism for being satisfied may vary from case to case. But no doubt it requires a scrutiny of the price(s) and if necessary an inquiry about the propriety of a quoted price Such inquiry may be made by obtaining a report from proper authority or by other information from appropriate sources.

No doubt the Executing Court is under legal duty to execute a decree. But the law also ordains that it must be satisfied about the fair price offered in an auction and thereby protect the interest of the judgment debtor as far as possible. In the instant case the

Executing Court legally did so by obtaining report from the lawful authority, namely the Sub-Registrar who under the Registration Act, 1908, keeps records of the documents of transfer of immovable property.

The appellate court committed an error of law in holding that the Executing Court travelled beyond its jurisdiction in calling for such report.

In consideration of the above, I hold that the impugned Judgment and order dated 02.08.2009 passed by the appellate court is not sustainable and hence liable to be set aside.

In the result, the Rule is made absolute. The judgment and order dated 02.08.009 passed by the learned District Judge, Rangpur in Artha Rin Appeal No.01 of 2008 is hereby set aside with the result that order dated 26.06.2008 passed by the learned Joint District Judge 1st Court, Rangpur as the Executing Court in Artha Rin Jari Case No. 15 of 2008 is upheld.

The said executing court is directed to proceed with the Artha Jari Case and to dispose of the same expeditiously in accordance with law.

No order as to costs.

Send a copy of the judgment and order to the said Executing Court.

B.Hossain.