

RUBINDER SINGH/RAJASTHAN FINANCIAL CORPN. AND ORS. A

v.

RAJASTHAN FINANCIAL CORPN. AND ORS.

DURGA PRASHAD SHARMA AND ANR.

NOVEMBER 23, 1994 B

[K. RAMASWAMY AND K. JAYACHANDRA REDDY, JJ.]

Civil Procedure, Code 1908—

*Miscellaneous Appeal—Auction Sale—Suit impugning validity of C
sale—Ad-interim injunction—Injunction granted dissolved subsequently—
Appeal—Sale set aside—Direction given to conduct sale in manner
indicated therein—Error of law in granting relief at stage of miscellaneous
appeal.*

The respondent obtained loan from Financial Corporation and D
committed default in paying the last instalment. Since he had not paid
the amount on repeated notices, the Appellant Corporation took
possession of the crusher. The crusher was put to auction.

The respondent filed the suit impugning the validity of the sale and E
also his liability to pay arrears as claimed by the Corporation. He also
sought for an *ad-interim* injunction pending suit. Initially interim
injunction was granted but later it was dissolved. On appeal, the High
Court in the impugned order allowed the appeal, practically set aside
the sale and had given directions to conduct the sale in the manner F
indicated therein. Hence these appeals by the Appellant Corporation.

Allowing the appeals, this Court

HELD : On the facts and circumstances of the case, this Court is of G
the view that the High Court was not justified at this stage to give those
directions as indicated in the impugned judgment. It would practically
amounts to decreeing the suit which is beyond the purview of granting
interlocutory orders. It is, therefore, clear that the High Court had
committed an error of law in granting the relief at the stage of
miscellaneous appeal. [14H, 15A] H

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2801-2 of 1992.

From the Judgment and Order dated 2.4.92 of the Rajasthan High Court in S.B.C. Misc. A.No. 472 of 1989.

B Praveen Kumar for the Appellant.

S.M. Jain, Jaideep Gupta, V. Kaushal & S.K. Jain for the Appellant in C.A. No. 2802/92 & Respondent in C.A. No. 2801/92.

Indra Makwana for the Respondent No. 4 in C.A. No. 2801/92 & Respondent No. 1 in C.A. No. 2802/92.

C The following Order of the Court was delivered :

D These appeals by special leave arise from the judgment of single Judge of the High Court of Rajasthan at Jaipur in S.B. Civil Misc. Appeal No. 472/1989 dt. April 2, 1992. The 4th respondent-Durga Prashad Sharma had obtained loan of Rs. 30,000. for establishing a stone-crusher from Rajasthan Financial Corporation, Respondent No. 1 in C.A. No. 2801/92 and the Appellant in C.A. No. 2802/92 payable in four equal instalments. He had paid three instalments but committed default in paying the last instalment of a sum of Rs. 7,500. Since he had not paid the amount stated to be of repeated notices, a notice was given on December 31, 1988 under section 30 of the Financial Corporation Act, 1951 calling upon the 4th respondent to make the payment. Since he had not paid the arrears of a sum of Rs. 31,160 inclusive of interest, the Corporation has taken possession of the crusher on February 17, 1989 and stated to have been published the notice of sale on May 26, 1989 in Rajasthan Patrika. Pursuant thereto, it was also claimed that the crusher was put to auction on September 20, 1989 at which the appellant in the first appeal became the highest bidder for a sum of Rs. 91,000. It has further been stated that the Corporation had given him the possession of the crusher on October 5, 1989.

F The respondent filed the suit on November 1, 1989 impugning the validity of the sale and also his liability to pay arrears as claimed by the Corporation. He also sought for an *ad-interim* injunction pending suit. Initially, interim injunction was granted but later it was dissolved. On appeal, the High Court in the impugned order allowed the appeal practically set aside the sale and has given certain directions to conduct the sale in the manner indicated therein. We have heard the counsel for the parties. On the facts and circumstances of the case, we are of the view that the High Court was not justified at this stage to give those directions as indicated in the judgment. It would practically amounts to decreeing the suit which is beyond the purview of granting interlocutory orders. It is, therefore, clear

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that the High Court has committed an error of law in granting the relief at the stage of miscellaneous appeal. Under these circumstances, the appropriate directions would be that (1) the appellant Rubinder Singh in C.A. No. 2801/92, the auction purchaser shall maintain the machinery in the same condition as entrusted to him on October 5, 1989 except attending to the minor repairs for making it in a working condition. He should continue to maintain in good condition. A B

(2) He should not alienate or encumber any part of crusher or machinery which is the subject matter of the sale and the subject matter of the suit.

(3) He is at liberty to apply for being impleaded as a party-defendant to the suit within a period of four weeks from today. C

(4) The trial Court is directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of the receipt of this order.

The appeals are accordingly allowed to the extent indicated above. No costs. D

A.G.

Appeals allowed.