

Debts Recovery Tribunal, Patna

Presiding Officer : **Shri Kaushalendra Yadav**

Appeal No.3 of 2022

[Arising out of order dated 06.08.2022 & 20.07.2022, passed in R.P. No. 18/2016]

Ravindra Nath Sinha, Son of Late Narsingh Sinha, resident of village – Ramganj, Police Station – Gaurichak, District – Patna.

----Applicants

Versus

1. **Canara Bank**, Exhibition Road Branch, Police Station – Gandhi Maidan, District – Patna.
2. **The Recovery Officer, Debts Recovery Tribunal, Patna.**
3. **Sri Prakash Kumar**, Son of Awadhesh Kumar Singh, Resident of Ward No. 7, Majlishpur, Alipur Hatta, District – Vaishali.
4. **Kundeshwar Mehta**, Son of Late Kuwaj Mehta, Resident of 69, Bagh Bhup Singh Lane, Alamganj, Post Office – Gulzarbagh, Patna – 800007.

----Respondents

Present:

For the Appellant : Sh. Sanjay Singh Thakur, Advocate
For the Respondent Bank : Sh. Manish Kishore, Advocate
For the Respondent No. 3 : Sh. Mukesh Kumar, Advocate

Dated: 23.06.2026

JUDGMENT

1. This Appeal has been filed by the appellant with the prayer to quash/set aside the order dated 06.08.2022 passed in RP 18/02016 by which sale dated 15.06.2022 was confirmed. It is also prayed to set aside the order dated 20.07.2022 vide which objection of the appellant was dismissed.

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2. As this is an Appeal wherein the Ld. Recovery Officer was not required to be made respondent. As a rule the adjudicating officer can be made party in the cases where some allegations of malafide actions are attributed (generally in writ petitions). All concerned including the Registry are advised to pay attention to this legal position.
3. The Reply of the appeal has been filed by the respondent bank as well as respondent no.3, auction purchaser.
4. The brief facts of the case are that the appellant availed loan facilities from the respondent bank. Due to default in repayment of outstanding dues, the account was classified as NPA and in order to recover its outstanding dues, the respondent bank filed OA 266/2015 and OA 267/2015 before this Tribunal. The said OAs were allowed by this Tribunal judgment/order dated 23.12.2015 and Recovery Certificates for Rs.3744894+intt. & costs and Rs. 3423952+intt.& costs respectively, have been issued and forwarded before the Recovery Officer of this Tribunal for its execution. Accordingly, the Recovery Cases have been numbered as RP 17/2016 and RP 18/2016. Further, recovery proceedings were initiated by the Recovery Officer. R.P. 18/2016 was treated as leading case and Ld. The subject matter of the dispute involves the immovable property situated at "[Property Details]", which was mortgaged to Respondent No. 1 (Bank) and subsequently put to public auction by the Learned Recovery Officer to satisfy both the Recovery Certificates. The Proclamation of sale on 30.03.2022 was issued jointly treating RP Case No.18/2016 a leading case.
5. The Recovery Officer issued a Proclamation of Sale on 30.03.2022 in RP 18/2016. Further, the property was auction sold on 15.06.2022 to recover the outstanding dues against both the certificate i.e. RP 17/2016 & RP 18/2016. The Appellant filed objections on 01.6.2022 and 24.06.2022. These objections were rejected on 20.07.2022. The sale was confirmed on 06.08.2022, in favor of Respondent No. 2 (Auction

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Purchaser) under Rule 63 of the Second Schedule to the Income Tax Act, 1961. As under Section 29 of the Recovery of Debts and Bankruptcy (RDB) Act, 1993 (formerly known as the RDDBFI Act), the provisions of the Second Schedule to the Income-tax Act, 1961 apply to DRT recovery proceedings.

6. Aggrieved from both the orders, the present Appeal has been filed on 26.08.2022 by the appellant.
7. It has been submitted by Id. Counsel of appellant that the Ld. The Recovery Officer attached the land only of the property in question as per attachment order passed in the matter and even in the Proclamation of Sale dated 30/03/2022 details of land only have been mentioned. Furthermore, in the auction sale notice dated 25.05.2022, only the details of land admeasuring 8316 Sq has been mentioned while there is constructed Building area admeasuring 36372 Sq. feet (G+4 (each floor contained constructed area measuring 6062 Sq. ft.) Building + Basement and each floor contained a constructed area measuring 6062 Sq. ft.) signifying the entire process to be bad in law. The property in question worth more than ₹4 Crores has been sold on very meagre price of Rs. 1,25,50,000/- to the Respondent No.3 i.e. Auction Purchaser. As per credit report enclosed as Annexure-1 of Supplementary Affidavit dated 03/10/2023, the value of the land and building was Rs. 121.89 lakhs on 19/02/2009 and after lapse of more than 13 years, the sale was made in collusion with and conspiracy between auction purchaser and the bank for Rs.1,25,50,000/- only. No valuation report was provided to the Appellant before fixing the reserve price and the same amount to material irregularity on the part of Ld. Recovery Officer. In the record of the R.C. No.18/2016, one Valuation Report dated 23/02/2022 is there but there is no reference of filing of the said Valuation Report in the day to day order sheet of the Ld. Recovery Officer which signifies that the filing of the Valuation Report is an afterthought and done through

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backdoor. There is only one reference about filing of Valuation Report by the Ld. Recovery Officer and the same will be evident from bare perusal of order dated 15/01/2021 but the said order does not speak about the date of Valuation Report nor any satisfaction is recorded by the Ld. Recovery Officer. The fixing of reserve price at Rs. 1,25,00,000/- of the property worth more than 4 Crores and auction sale at Rs. 1,25,50,000/- in favour of single bidder cannot be justified. The Construction in the Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) has been unjustifiedly sold in the garb of and with the sale of land under mortgage.

8. The Learned Counsel for the Appellant contends that the entire execution and auction process was carried out in total secrecy and in gross violation of the principles of natural justice and the mandatory provisions of the Second Schedule to the Income Tax Act, 1961.
9. The Appellant highlights three procedural flaws in the actions of the Learned Recovery Officer:

"First", the valuation report obtained by the Respondent Bank/Recovery Officer was "never served" upon the Appellant.

"Second", "no opportunity was given" to the Appellant to file objections against the value arrived at in the said report.

"Third", the order passed by the Learned Recovery Officer directing the issuance of the "Proclamation of Sale is completely silent" and does not contain an iota of discussion or application of mind regarding the valuation or how the reserve price was determined.

The Appellant asserts that these cumulative omissions amount to a structural fraud on the execution process, causing severe "substantial injury" under "Rule 61" as the asset was sold at a severely depressed price.

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The Appellant asserts that this undervaluation constitutes a "material irregularity and fraud" under "Rule 61" of the Second Schedule, causing substantial, irreversible injury to the Appellant.

10. On the other hand it has been submitted on behalf of the respondent bank that the present Appeal is barred by law of limitation as the appellant has virtually challenged the order dated 20.07.2022 not to the order dated 02.08.2022 and there is no provision to condone the delay in filing Appeal under Section 30 of RDB Act. The order dated 24.06.2022 by which objection of Appellant was decided has attained finality after being acted upon and the auction sale became complete and as such any objection to confirmation of sale is not maintainable. It is further submitted that the Ld. Recovery Officer has confirmed the sale in favour of Respondent no. 3 vide order dated 06.08.2022 but the appellant did not raise any objection on the point of sale process and payment schedule. The appellant has also suppressed that execution has been made by clubbing the certificate amounts of RP 17/2016 and RP 18/2016. As per sale proclamation e-auction was held for recovery of both the certificates on 15.06.2022. Hence the impugned Appeal is also not tenable in the eye of law when prayer has been made in respect of only one certificate although two certificates have been issued against the Appellant.

11. Ld. Counsel of auction purchaser has submitted that only conceivable surviving issue sought to be raised in the present appeal pertains to the order dated 06.08.2022 vide sale was confirmed as the Appeal has been filed on 26.08.2022. All other stages of recovery proceedings are barred by law of limitation. The Section 30 of RDB Act, 1993 mandates that any appeal against an order of the Recovery Officer must be filed within thirty 30 days. Furthermore, the confirmation of sale is an irrevocable act, and once the sale stands confirmed and the sale certificate is issued, the borrower's right of redemption stands extinguished.

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12. It is further submitted that the property in question was attached vide order dated 11.08.2016. Since then the property in question was put on auction on Six occasions between 2017 to 2022 with the reserve price ranging from Rs. 2 Crores to Rs.1.25 Crores. On 15.06.2022, the 06th e-auction was conducted with the reserve price of Rs.1.25 Crore, and the Respondent no.3, auction purchaser emerged as highest and successful bidder at Rs.1,25,50,000/-. The auction purchaser deposited the entire bid amount within the prescribed time, strictly complying with Rules 57 and 58 of the Second Schedule. The sale was confirmed on 06.08.2022 in favour of the auction purchaser and a sale certificate was also issued. Further the sale deed was also registered on 30.12.2022. The objections raised by the appellants were duly considered and rejected by the way of a reasoned order dated 20.07.2022 by the Ld. Recovery Officer. The valuation of property is concerned; the fixation of reserve price is an administrative function of the Recovery Officer based on valuation reports and market response. More so, the progressive reduction of reserve price after repeated failed auctions is legally recognized and commercially necessary for recovery of public dues. Even as per the valuation report of the Bank valuation dated 23.02.2022, relied upon by the Appellant himself states that Market Value: approximately ₹1.98 Crores, and Forced Sale Value: approximately ₹1.59 Crores. In the conditions precedent, the sale at ₹1.25 Crores after six failed auctions cannot be characterized as a distress or fraudulent sale.
13. Significantly, it is cogent to place reliance on the Proclamation of the sale dated 30.03.2022 issued by the office of Ld. Recovery Officer, DRT, Patna wherein it is explicitly mentioned that the said property will be sold on 'as is where is basis'. Furthermore, as per the schedule, the property mentioned is the plot and not the building. Hence, there arises no question of floors, as is raised by the Appellant on the various instances which bring out the sole objective of the Appellant behind filing

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numerous applications that is nothing but stall the proceedings in order to harass and pressurize the Respondent No. 3, who is lawfully entitled to enjoy and maintain the auctioned property in question.

14. The objections against this appeal are two fold -

"Firstly"- that the order rejecting the valuation objections dated 20.07.2022, is strictly barred by limitation under Section 30(1) of the RDB Act.

"Secondly"- that because the Appellant filed the initial objections on valuation under Rule 61 'without making a mandatory deposit of the certificate amount and accumulating interest, the objections were inherently defective, rendering this consequential appeal non-maintainable.

15. Having heard the Learned Counsel for all the parties and perused the record, the following issues arise for determination:

"Issue A:" Whether the appeal is time-barred regarding the order 20.07.2022, rejecting the valuation objections?

"Issue B:" Whether an objection under Rule 61 regarding valuation/undervaluation is maintainable without a mandatory deposit of the certificate amount?

"Issue C:" Whether the non-service of the valuation report, lack of opportunity to object, and the absence of reasoning in the sale proclamation order constitute a "material irregularity or fraud" sufficient to set aside the confirmation of sale?

Findings and Analysis on Points of Law"

16. **"On Issue A"**- Ld. Council for the respondent Bank has argued that the present appeal is barred by limitation. It has been submitted that the Sale was conducted on 15th of June 2022. The objection against this sale was decided vide order dated 24.06.2022. The appellant has challenged the order dated 20.07.2022 by which objection of Appellant was decided has attained finality after being acted upon and the auction sale became

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complete and as such the present appeal filed on 26.08.2022 is barred by limitation from 24.06.2022 and 20.07.2022. Any objection to confirmation of sale is not maintainable. The Ld. Recovery Officer has confirmed the sale in favour of Respondent no. 3 vide order dated 06.08.2022.

17. From the perusal of the record of the RP Case No. 18 2016 it appears that no order was passed on 24. 06.2022. However an order dated 20.07.2022 was passed. It has been mentioned in the order 20.07.2022 that an objection dated 24.06.2022 (filed on 02.07.2022) and another objection dated 01.06.2022 were heard and decided. As the Appeal has been mainly preferred against the confirmation of sale, the previous orders rejecting objections gets merged in the final order of confirmation of sale, the main appeal filed against the confirmation of sale, can challenge the illegalities of all previous orders leading to the final order of confirmation. In this process the legality, material irregularity and propriety in the proclamation of sale, issuance of sale notice, conducting the auction sale and disposal of objection, if any, as the factors responsible for the order of confirmation of sale, can also be questioned. The initial order rejecting the objections was a precursor to the final Order of Confirmation of Sale, the confirmation order itself is structurally defective and bad in law. Eventual mentioning of the order dated 20.07.2022 rejecting the objection against the sale or non mentioning of the proclamation of sale, issuance of sale notice or conducting the auction sale make no difference. These points can be raised while analysing the order dated 06.08.2022. A defect or material irregularity in rejecting a valid objection goes to the very root of the Recovery Officer's jurisdiction to confirm the sale. This Tribunal holds that when an appeal is preferred against the final "Order of Confirmation of Sale (Rule 63)" Within the prescribed 30-day statutory window under Section 30 of the RDB Act, the Appellant is legally entitled to challenge all interim,

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foundational orders leading up to that final order, including the rejection of their Rule 61 objections.

The cited case law under *INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA V. OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD. & ORS-2017-16-SCC-137* and *BINU VINCENT VS FEDERAL BANK LTD. 2025 SCCONLINE KER 1475 AND AVNESH CHANDAN GADGIL & ANR V. ORIENTAL BANK OF COMMERCE & ORS-2022-16-SCC721* do not apply in the present set of circumstances. Therefore, the appeal cannot be discarded piecemeal as time-barred. Issue A is decided in favor of the Appellant and this Tribunal holds that when a final "Order of Confirmation of Sale, the Appellant is legally entitled to challenge all foundational interim orders. Therefore, the appeal is within time.

18. **Issue B:** The Respondents vehemently argue that because the Appellant filed the initial objections on valuation under Rule 61 'without' making a mandatory deposit of the certificate amount and accumulating interest, the objections were inherently defective, rendering this consequential appeal legally non-maintainable.

It has been argued by the auction purchaser that If the borrower is the one applying under this rule, the application will be automatically disallowed unless they deposit the recoverable certificate amount with the DRT.

In my opinion this argument does not hold ground in case of fraud by the Bank concealing the construction over the Land under mortgage. This defect continued in the proclamation of sale, sale notice, disposal of objections and confirmation of sale. It finally resulted in irreparable injury to the mortgagor and an unjust enrichment to the Auction purchaser by getting construction from Basement to G+4 (each floor

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contained constructed area measuring 6062 Sq. ft.) building at throwaway price. The chances of competitive buyers were diminished by non disclosure of construction and the building.

To evaluate this issue, we must examine the distinct statutory architectures of "Rule 60" and "Rule 61" of the Second Schedule to the Income Tax Act, 1961.

"Rule 60 (Application to set aside sale on deposit):" This rule is a pure redemption provision. It allows a borrower to save their property 'without proving any fault' in the auction, provided they deposit the entire arrear amount plus a 5% penalty for the purchaser within 30 days. Here, deposit is an absolute, non-negotiable "pre-condition".

"Rule 61 (Application to set aside sale on grounds of non-service or irregularity):" This rule is an adjudicatory provision. It allows an aggrieved party to challenge a sale on the grounds of "material irregularity or fraud" in publishing or conducting it, provided they can prove substantial injury.

The Proviso to Rule 61 explicitly states: "Provided that no sale shall be set aside on the ground of any defect in the notice of attachment or proclamation of sale... unless the applicant has sustained substantial injury by reason of such irregularity or fraud."

19."Crucially, nowhere does Rule 61 mandate that a borrower must deposit the entire certificate amount or interest as a condition precedent to merely 'challenging' a material irregularity or fraud in the valuation." To read a mandatory deposit into Rule 61 would mean that a completely fraudulent, undervalued sale of a citizen's property could never be challenged by a distressed, impecunious borrower. This would defeat the principles of equity and natural justice. The Debts Recovery Tribunal

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(DRT) Recovery Officer will generally only entertain and allow objections based on substantive or procedural errors: where-

- The objector proves that the property does not belong to the defaulter/borrower, or that they hold a prior legal interest/possession in it.
- The boundaries, demarcation, or identification of the property specified in the proclamation are wrong or misleading.
- The mandatory demand notice to pay the arrears (under Rule 2) was never legally served on the defaulter before drawing up the sale proclamation.
- The property valuation is grossly undervalued, or the reserve price was fixed arbitrarily without following due process.

20. The Supreme Court of India in ***RAM KARAN GUPTA V.J.S.EXIM LTD (2013)*** "***C.N. PARAMASIVAM V. SUNRISE PLAZA (2013)***" confirmed that while the rules of the Second Schedule are mandatory, they must be applied contextually. The mandatory deposit applies strictly to an application under Rule 60, or when a borrower seeks a stay on dispossession. But "not" as a structural bar to register an objection of fraud or gross undervaluation under Rule 61. Therefore, the objection of the Respondents regarding non-maintainability is legally unsustainable.

Where the challenge is directed at the illegal conduct and corrupt integrity of the auction process itself, not the lack of notice. There is absolutely no mandatory requirement to deposit the certificate amount " under Rule 61 of the Second Schedule to the Income Tax Act when challenging a sale on the grounds of fraud, collusion, or undervaluation prior to its confirmation. **Relevant provision runs as under-**

61. Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised

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by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale: Provided that—

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

The requirement to make a deposit is often a point of confusion because of the distinct financial thresholds built into the rules. The legal position clarifies this distinction. To understand why a deposit is not required, look at the exact wording of the “Proviso to Rule 61”:

“Provided that no sale shall be set aside on the ground of any defect in the notice of attachment or proclamation of sale... unless the applicant has sustained substantial injury by reason of such irregularity.” AND

Provided further that ‘no application’ under this rule shall be entertained —(a) “unless the applicant deposits “ the amount recoverable from the execution of the certificate.

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To interpret the provisions in consonance with the principles of natural justice it requires such deposit "IF" the condition of the first proviso (regarding substantial injury) is not satisfied that is, if no substantial injury has been caused due to non service or irregularity, his application under Rule can be entertained only after deposit.

21. Furthermore, a distinction must be drawn between "Rule 60" (redemption by full deposit) and "Rule 61" (challenge on material irregularity/fraud). Nowhere does Rule 61 mandate a pre-deposit of the certificate amount to register an objection against patent procedural illegalities or fraud. To enforce a pre-deposit here would strip the borrower of their fundamental right to a fair execution.
22. Allahabad High Court in ***Sri Kamal Kishore v. Debts Recovery Appellate Tribunal, Allahabad & Ors. (2022)07ILR A625*** has laid down the proposition law in a The case arose from a dispute where a judgment-debtor (original borrower) mortgaged his property to the Central Bank of India and subsequently defaulted. Before the bank initiated recovery, the appellant (Kamal Kishore) purchased the property via a registered sale deed in 1995 and established a small-scale industry on it. The bank secured a recovery certificate, and the DRT Recovery Officer auctioned the property in October 2009. The appellant directly challenged the auction sale by filing an appeal under Section 30 of the RDDBFI (RDB) Act, 1993 before the Debts Recovery Tribunal (DRT). The DRT stayed the confirmation of the sale on the condition that the appellant deposit the auction price amount, which he did. The DRT ultimately set aside the auction, ruling that the appellant had purchased the "equity of redemption" from the borrower and could redeem the property before confirmation of the sale.

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However, the Debts Recovery Appellate Tribunal (DRAT) and a Single Judge of the Allahabad High Court reversed the DRT's decision. They ruled that:

- The appeal under Section 30 was not maintainable because the appellant bypassed the mandatory procedures and pre-deposits required under Rules 60 and 61 of the Second Schedule to the Income-tax Act, 1961. The appellant challenged this reversal before the Division Bench of the Allahabad High Court. In the Special appeal the Key Legal Issues & Findings recorded are: Issue A: Is a Section 30 Appeal maintainable if the aggrieved party bypasses Rules 60 and 61 of the Second Schedule? Finding: Yes. The Court held that an appeal under Section 30 of the RDB Act is completely independent of the remedies under Rules 60 and 61. Section 30 opens with a powerful non-obstante clause ("Notwithstanding anything contained in section 29..."). While Section 29 imports the Income-tax recovery rules, it cannot whittle down or override the plenary right of an aggrieved person to appeal any order of a Recovery Officer directly to the Tribunal.
- Deposit Requirement: The Court clarified that if an auction sale is challenged under Section 30 on grounds completely different from those in Rule 60 (such as structural nullities, concurrent jurisdictions, or independent titles), there may be no strict requirement of a pre-deposit at all. The Division Bench allowed the special appeal and set aside the orders of the Single Judge and the DRAT, effectively restoring the DRT's decision to cancel the auction sale. To balance the equities and protect the innocent auction purchaser, the Court ordered that the purchaser be refunded his original deposit along with 7.5% compound interest, to be paid by the appellant.

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✓ In the present case Mandatory Pre-deposit has ^{been} made a vide report of the registrar dated 03.10.2022. As such the ^{law} cited in case law **KUMANDAS VISANJI AND CO. JALGAON & ORS V. P.N.B. JALGAON & ORS 2023-2-MHLJ-274** has no relevance.

In view of the aforementioned law and for the purpose of appeal under S.30 availing the non obstinate clause the case law **STATE BANK OF INDIA V. P.K. JANARDHANA & ORS 2021-SCC ONLINE-MAD-2871** and, **NAZIM CONTINENTAL & ORS V. INDIAN OVERSEAS BANK- 2009 SCC ONLINE-MAD 862** have no application.

This case law laid down in **Sri Kamal Kishore v. Debts Recovery Appellate Tribunal, Allahabad & Ors. (2022)07ILR A625** is highly relevant in the present situation as the challenge is directed at the illegal conduct and injustice due to the auction process itself, not the lack of notice. Especially non disclosure in reserve price, proclamation and the auction notice regarding the Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) building omission.

It implies that route of Rule 61 cannot be sine qua non for the appeal meaning thereby there is no need to file a restricted Rule 61 application before the Recovery Officer for the Appeal under Section 30 RDB Act using the non-obstante clause may be filed on the grounds of a fundamental misdescription/valuation failure (entirely distinct from standard Rule 60 financial regularities).

23. "On Issue C: Merits of Procedural Non-Compliance & Valuation" We now address the core structural infirmities raised by the Appellant. It has been submitted on behalf of the Appellant that The present Appeal is fit case to be allowed in terms of observations made in Para 21, 22, 25, 26 and 27 of the Hon'ble Supreme Court in the case of Ram Kishun & Ors V/s State of Uttar Pradesh & Others.

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24. In **Navalkha & Sons vs Sri Ramanya Das & Ors 1970 AIR 2037** while dealing with the confirmation of sale by court, held that there must be a proper valuation report, which should be communicated to the judgment-debtor and he should file his own valuation report and the sale should be conducted in accordance with law. After confirmation of sale, there should be issuance of sale certificate. The court cannot interfere unless it is found that some material irregularity in the conduct of sale has been committed. The Court further held that it should not be a forced sale. A Valuer's report should be as good as the actual offer and the variation should be within limit. Such an estimate should be done carefully. The Court further held that unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion. [See also *kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd.*²⁸, *Union Bank of India v. Official Liquidator*²⁹ *B. Arvind Kumar v. Govt. of India*³⁰ and *Transcore v. Union of India*³¹.]

In ***Divya Mfg. Co. (P) Ltd. v. Union Bank of India*** this Court held that a confirmed sale can be set aside on the ground of material irregularity or fraud. The court does not become functus-officio after the sale is confirmed. As cited by the respondent In ***Valji Khimji and Co. v. Official Liquidator of Hindustan Nitro product (Gujarat) Ltd 2008-9-SCC-299***, the court held that auction-sale should be set aside only if there is a fundamental error in the procedure of auction e.g. not giving wide publication or on evidence that property could have fetched more value or there is somebody to offer substantially increased amount and not only a little over the auction price. Involvement of any kind of fraud would vitiate the auction-sale.

25. In ***FCS Software Solution Ltd. v. La Medical Devices Ltd.*** this court considered a case where after the confirmation of auction-sale it was

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found that valuation of movable and immovable properties, fixation of reserve price, inventory of plant and machineries had not been made in the proclamation of sale nor disclosed at the time of sale notice. Therefore, in such a fact situation, the sale was set aside after its confirmation.

26. The appellant filed objections dated 01/06/2022 and 24/06/2022 before the Ld. Recovery Officer. Vide objection dated 01/06/2022, the Appellant raised several objections which include but the said objections were dismissed by the Ld. Recovery Officer merely on the ground of the requisite Court Fee not paid against the said objection and hence, the same not considered and stand dismissed.
27. Coming to the factual merits, the fixation of the reserve price is a critical milestone in the execution process. A property must be sold at a fair market value to ensure that the maximum possible recovery is realized to clear the bank's dues, while ensuring the borrower is not unfairly stripped of their residual equity. Rule 53 of the Second Schedule mandates that the proclamation of sale must specify the fair value of the property. If the Recovery Officer accepts a low-ball valuation without applying their mind, without seeking an updated valuation from an approved, independent valuer, or by ignoring patent contradictions in the Bank's own valuation reports, it amounts to a "material irregularity" that strikes at the integrity of the auction.
28. Upon reviewing the lower court records, it is found that the Learned Recovery Officer did not mention any valuation report in his order fixing the reserved price. The nature of the property is described as Land only totally ignoring the fact of construction of building over it that comprises A Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) construction. that too when this question was specifically raised in the objections filed by the Appellant. This failure directly led to a depressed reserve price, resulting in the property being knocked down

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to Auction Purchaser at an unconscionably low price. This clearly satisfies the test of "substantial injury" under Rule 61. The settlement of the terms of the sale proclamation is governed by "Rule 53 of the Second Schedule". The reserve price is the most critical element of this proclamation, as it directly impacts the disposal value of the debtor's asset.

29. It is a settled position of law, reinforced by the Hon'ble Supreme Court of India in "*Ambati Narasayya (1989)*" and "*Desh Bandhu Gupta v. N.L. Anand (1994)*", that the execution court or authority must bring its independent judicial mind to the valuation of the property. The asset cannot be sold for a song.

30. To achieve a fair valuation, the Recovery Officer must adhere to the principles of natural justice. Upon examining the record, **there are Three Fatal Procedural Lapses on Record:**

"Non-Service of Report:" The valuation report on which the reserve price was built was kept entirely in the dark. It was never served to the Appellant. A party cannot meet a case they do not know.

"Denial of Right to Object:" Because the report was never shared, the Appellant was denied the vital statutory opportunity to file objections, point out discrepancies, or place competing market rates/circle rates on record.

"Unreasoned Order:" A perusal of the order to issue the Proclamation of Sale reveals that the Learned Recovery Officer simply signed off on the numbers presented by the Bank. The order contains absolutely "no discussion, no evaluation of the report, and no reasons" justifying the adoption of that specific reserve price.

The absence of reasons in the proclamation order is a fatal defect. Administrative and quasi-judicial orders must speak; reasons are the lifeblood of a legal order. By failing to discuss the valuation report,

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the Learned Recovery Officer failed to exercise the jurisdiction vested in them under the law.

31. Selling a citizen's property through a process where the valuation report is hidden, objections are blocked, and the final ordering authority records no reasons is the absolute definition of "material irregularity and fraud in publishing the sale under Rule 61". It has directly resulted in a depressed auction price, causing severe, quantifiable "substantial injury" to the Appellant by eroding their residual equity. Consequently, the auction sale is structurally unsustainable. Issue C is decided in favor of the Appellant.
32. Under Section 70 of the Transfer of Property Act, 1882, any alteration, addition, or construction made to a mortgaged property after the date of the mortgage is treated as an "accession" to the security. As the law automatically attaches the newly constructed Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) building to the existing mortgage. The bank legally becomes the mortgagee of both the land and the building. Because the building became part of the mortgaged asset, the bank was legally obligated to value the building and include its description in the auction proclamation. They cannot claim ignorance of a structure standing on the land at the time of drawing up the sale notice.
33. A sale notice must strictly reflect the actual state of the property intended for sale. Leaving out a multi-story building suppresses its actual nature, which stops competitive bidders from showing up and ruins the chance of getting a fair price.
34. Surprisingly an auction buyer bidding only on the price of "bare land" is effectively getting a Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) building entirely for free. This causes shocking financial injury to the borrower. This specific fact pattern shifts the case from a standard dispute into a clear instance of gross material irregularity and constructive fraud. The Recovery Officer kept in

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the dark to sell an asset that does not legally exist in the form described (selling "vacant land" when it is physically a commercial/residential Basement and G+4 (each floor contained constructed area measuring 6062 Sq. ft.) hub). A sale of a non-existent description is a nullity in law. The sale proclamation is a structural nullity because it attempts to sell an unvalued, undescribed asset. As such the Nullity, fraud, collusion or undervaluation are the exceptions to the general principle not to disturb the sale by way of public auction sale. As such the respondent gets no benefit of cited law in **SANJAY SHARMA V. KOTAK MAHINDRA BANK LTD. & ORS. 2024-SCC ONLINE SC 4589, SAASHIV PRASAD SINGH V. HARENDRA SINGH & ORS 2015-5 SCC 574, JANATHA TEXTILES & ORS V. TAX RECOVERY OFFICER & ORS 2008-12-SCC 582, SI2 MICROSYSTEMS PVT LTD. BENGALURU & ANR. V. BANK OF BARODA, MUMBAI & ORS- 2023-SCC ONLINE-BOM-510 and CENTRAL BANK OF INDIA V. C.L.VIMLA & ORS 2015-7-SCC-337.**

35. In Augustine **K.M. vs. The South Indian Bank Limited (2024)**, court has held that a sale proclamation must be set aside or amended if a building standing on the property is completely omitted from the proclamation text.
36. In view of the detailed findings and legal reasoning recorded above, the present appeal succeeds and the sale under challenge is liable to be set aside.

ORDER

Present Appeal is allowed with costs.

The order of the Learned Recovery Officer rejecting the objections, along with the subsequent final Order of Confirmation of Sale passed under Rule 63, are hereby set aside.

Respondent No. 1 (Bank) is directed to refund the entire auction purchase money deposited by Respondent No. 2 (Auction

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Purchaser) along with interest at 7.5% per annum within a period of 15 days from today.

The Respondent Bank is directed to serve a certified copy of its current valuation report to the Appellant within 7 days from today.

The Appellant is granted 10 days from the receipt of said report to file their objections before the Learned Recovery Officer.

The Recovery Officer shall hear both sides and pass a speaking, reasoned order fixing the reserve price afresh based on objective parameters. Following the fresh determination of the reserve price, the Recovery Officer shall issue a new proclamation of sale in strict compliance with Rule 53 and proceed with the auction process de novo.

A copy of this order be given to the parties as well as to the concerned Id. Recovery Officer of this Tribunal.

Judgment signed, sealed, dated and pronounced in the open court on this 23RD Day of June, 2026.

Dictated & corrected by me.

Kaushalendra Yadav
23/6/26
[Kaushalendra Yadav]

Presiding Officer

Debts Recovery Tribunal, Patna