

17.12.2025

Present: Sh. R. Khan, Ld. counsel for DH with DH.  
Sh. Albar Qureshi & Ms. Mansi Bidhuri, Ld. counsel for JD  
with wife of JD.  
Auction purchaser Riyajuddin in person

1. Auction purchaser Riyajuddin has moved an application praying for issuance of necessary sale certificate qua the auctioned property in his favour.
2. JD has moved a separate application u/O XXI Rule 89 CPC seeking setting aside of sale.
3. Arguments on both the applications heard. Record perused.
4. In this case, property bearing no. Flat no. 1209, 3<sup>rd</sup> Floor, Gali No. 14, Near Mother Dairy, New Mustafabad, Rajiv Gandhi Nagar, Delhi-110094 was auctioned on court orders on 30.08.2025. Thereafter, as per record, the auction purchaser has also deposited the amount of Rs.14 lacs in court, as per rules. The details of which are as under:
  - (i) By way of cash sum of Rs.3,50,000/- which was deposited in State treasury by court auctioneer on 19.09.2025.
  - (ii) By way of demand draft bearing no. 685005 dated 12.09.2025 for a sum of Rs.10.5 lacs in name of this court, submitted by auction purchaser.
5. Now, auction purchaser wants that the said sale be confirmed and

necessary sale certificate be issued in his favour.

6. On the other hand, JD has now filed an application seeking setting aside of the said sale u/O XXI Rule 89 CPC and it is pleaded in the application that JD has already paid a sum of Rs.4 lacs and **the remaining decretal amount is being deposited/shall be deposited in compliance of order XXI Rule 80(1)(a) CPC.** It is further pleaded in the said application that **judgment debtor undertakes to deposit the entire balance decretal amount along with interest, costs and execution expenses, as well as the statutory compensation/interest payable to the auction purchaser, as required under rule 89(1)(b) CPC, within the prescribed time.**
7. Thus, as per the present application of the JD, he undertakes to pay the money under the decree with costs **within prescribed time.**
8. On query of this court, as to what is the prescribed time in law for depositing the said money under the decree, counsel for JD submitted that the same is 60 days from the proclamation of sale under Article 127 of Limitation Act, 1963.
9. Order XXI Rule 89(1) CPC reads as under:

*(1) Where immovable property has been sold in execution of a decree, [any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person], may apply to have the sale set aside on his deposition in Court,-*

*(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and*

*(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.”*

10. A bare perusal of the above provision shows that where an immovable property has been sold in execution of a decree, any person having interest in the property may have the sale set aside **on**

his depositing in court (a) for payment to the purchaser, a sum equal to 5% of the purchase money, and (b) for payment to the DH, the amounts specified in the proclamation of sale, less the amount already received by DH after proclamation of sale.

11. Thus, under the said provision, 5% of the purchase amount (which in this case shall be Rs.70,000/- being 5% of the purchase amount of Rs.14 lacs) is required to be deposited by the person having interest in the property auctioned and the said money is to be paid to the auction purchaser. No such amount has been deposited in court by the DH with this application by the JD.
12. Again, under the said provision, JD/person interested is also liable to pay money as per the proclamation of sale subject to the settlement qua the amount already paid. This would mean that the total money payable under the decree to the JD minus the amount of Rs.4 lacs already paid by JD to DH i.e. Rs.5,34,692/- should have been deposited by the JD with the present application and only then could the JD cause the setting aside of sale.
13. As far as the contention of JD that he shall pay the money within the prescribed time is concerned, the same is misconceived. Order XXI Rule 89(1) CPC does not prescribe any time for payment and a bare perusal of said provision would show that the money should be deposited with the application itself. Neither any money has been deposited with the application nor it is offered in court.
14. The plea of applicability of Article 127 of Limitation Act deals with the period of limitation within which a proceedings for setting aside of sale can be brought by an applicant and the time period of 60 days

provided under the said provision does not lay any time within which the money is required to be deposited. It shall mean that a person can seek setting aside of sale within 60 days of the time period provided under Article 127 of Limitation Act. But, the said period is not providing for allowing JD or any person time of 60 days to deposit money under Order XXI Rule 89(1) CPC.

15. In such circumstances, since JD has neither deposited money within the meaning of Order XXI Rule 89(1)(a) CPC for paying the auction purchaser nor has he deposited money within the meaning of Order XXI Rule 89(2)(b) CPC for paying the DH, no ground is made to set aside the sale and thus, the application is dismissed being without merit.

16. As per Nazir report, auction purchaser Riyajuddin has already deposited the entire auction money with this court. Now, he is seeking confirmation of sale and issuance of necessary sale certificate.

17. **Considering the same, sale of property bearing Flat no. 1209, 3<sup>rd</sup> Floor, Gali No. 14, Near Mother Dairy, New Mustafabad, Rajiv Gandhi Nagar, Delhi-110094 is confirmed u/O XXI Rule 92 CPC. Let necessary sale certificate u/O XXI Rule 94 CPC be issued in favour of auction purchaser namely Riyajuddin s/o Sh. Rehamat Khan r/o Plot No. 12/2, H. No. 2326/2, Bilal Masjid, Anjali Vihar, Loni Dehat, District Ghaziabad, UP-201102.**

18. As per calculation submitted by the Nazir, as on 04.09.2025, a sum of Rs.9,34,692/- is due and payable by JD to DH.

19. He has already paid a sum of Rs.4 lacs to DH w.e.f. 25.09.2025 till

26.11.2025. Thus, after adjusting the said amount, a sum of Rs.5,34,692/- is still due and payable by the JD to DH. A sum of Rs.10,000/- was also paid by DH to the court auctioneer for auction of property and thus, the said money shall also be payable to him.

20. Thus, a total amount of Rs.5,44,692/- is found due and payable to DH.

21. A sum of Rs.14 lacs are deposited by the auction purchaser. After adjusting the aforesaid amount payable to DH, a sum of Rs.8,55,308/- remains.

22. From the said amount, the cost of auction is to be deducted. The total cost of auction, as per Nazir report is Rs.35,125/-. Out of this, a sum of Rs.28,100/- is payable to the court auctioneer namely Sh. Abhishek Sharma and the remaining amount of Rs.7,025/- is to be deposited in State treasury.

23. Out of Rs.28,100/- payable to court auctioneer, a sum of Rs.10,000/- has already been paid to court auctioneer by DH and thus, now, a sum of Rs.18,100/- shall be payable to court auctioneer Sh. Abhishek Sharma.

24. This would mean that court auctioneer is to be released a sum of Rs.18,100/- and a sum of Rs.7,025/- shall stay in the treasury.

25. The amount remaining, after adjusting for the amount payable to DH, is Rs.8,55,308/-. The said amount shall be reduced by the amount payable to court auctioneer and the amount which has to stay with the State treasury. This would mean that now a sum of Rs.8,30,183/- shall remain and this amount shall be released to the JD as the amount remaining after adjusting for the decree as well as

**the costs of the execution.**

26. The Nazir reports that while the amount of Rs.3.5 lacs is already deposited with State treasury, the amount of Rs.10.5 lacs is lying in the form of a bank demand draft dated 12.09.2025 drawn on Punjab National Bank, Yamuna Vihar Branch, Delhi bearing no. 685005 in the name of this court. He submits that necessary directions be passed for revalidation of the said demand draft.
27. Let a request letter be sent to the concerned branch to revalidate the said demand draft and necessary assistance shall be given by auction purchaser Riyajuddin in this regard. After revalidation, let the said demand draft be also deposited with the State treasury and thereafter, the amount in terms of this order be released to the DH, JD and the court auctioner namely Sh. Abhishek Sharma.
28. Let the copy of sale certificate be sent to concerned Sub-Registrar for recording the same in the relevant records in terms of Sec. 89(2) of Registration Act, 1908 under intimation of this court.
29. Needless to say that if the auction purchaser wants, he is at liberty to move an appropriate application u/O XXI Rule 95 CPC for delivery of possession of property, if so advised.
30. List for confirmation of release of payments in terms of this order and further proceedings on 24.01.2026.

AASHISH GUPTA  
DJ-01/NE/KKD/DELHI  
17.12.2025