

**1980 KHC 918**

Supreme Court of India

*\*V. R. Krishna Iyer; P. S. Kailasam; A. D. Koshal, JJ.*

Sawan Ram Aggarwal v. Narish Chandra Jain

C. A. No. 2162 (p) of 1977

24 November, 1978

*Constitution of India, Art.133 - Civil Procedure Code, 1908, O.23, R.3, O.21, R.91, R.92 -- Appeal -- Compromise -- Auction Sale -- Settlement at the stage of appeal before Supreme Court -- Setting aside of auction sale - Held, auction sale shall be set aside on condition that the judgment debtor deposits on or before 3rd of January 1979 a sum of Rs. 85,000/- into this court to the credit of the appeal. (Para 1)*

**JUDGMENT**

V. R. Krishna Iyer, J.

1 After a full addressed argument, the parties realised their respective positions and then thanks to counsel on both sides and their statesmanship in producing a settlement. The following terms have been agreed upon and we pass an order on those terms:

(1) The decree holder who has withdrawn all that is due to him shall not in the least be affected and the amount which he has withdrawn shall not in any manner be brought back into court.

(2) The auction sale shall be set aside on condition that the judgment debtor deposits on or before 3rd of January 1979 a sum of Rs. 85,000/- into this court to the credit of the appeal. If the said sum is deposited within the time allowed, it will be withdrawn by the auction purchaser in toto.

(3) The amount lying in deposit to the credit of the decree together with any interest that might have accrued on account of the fixed deposit will be withdrawn by the appellant judgment debtor.

2 If the amount of Rs. 85,000/- is not deposited on or before 3rd January, 1979, the appeal shall stand dismissed with costs. If the amount is deposited as directed above, the appeal shall stand allowed with no order as to costs.

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