

Present: Fisher C.J. and Driberg J.

1929.

ANNAMALAI CHETTY *v.* LUDOVICI.

151—D. C. (Inty.) Kandy, 1,804.

Auction sale—Property of insolvent—Higher offer after sale—Power of Court to refuse confirmation.

Where property of an insolvent estate is sold by auction, the Court has no power to withhold confirmation of the sale merely because the offer of an enhanced sum is made after the auction.

A PPEAL from an order of the District Judge of Kandy.

H. V. Perera (with *Garvin*), for appellants.

Keuneman, for respondents.

December 20, 1929. FISHER C.J.—

This is an appeal by a purchaser of certain property of an insolvent estate from the refusal of the learned Judge to confirm the sale. The reason given by the learned Judge for his refusal is that since the close of the sale by auction an offer has been put forward to buy the property at a price very considerably higher than that at which the property was knocked down to the highest bidder, the appellant. Clause 5 of the conditions of sale contains the following words: "On payment of the remainder of the purchase money by the purchaser and the confirmation of sale by court the vendor shall execute a conveyance of the said property, &c.," and it is presumably on the words referring to confirmation by the Court that the learned Judge has based his refusal to confirm the sale. He does not expressly refer to it in his judgment, but he says that "The Court could refuse to confirm the sale for any good reason." Other considerations were put before us which it was urged would form a

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good basis for justifying the learned Judge in refusing to confirm the sale, but those considerations were not urged in the Court below, and for the purposes of this appeal, therefore, we must assume that the only objection to confirmation is that which was urged in the Court below. In my opinion the mere fact that a fresh offer of an enhanced sum is made after the close of the sale by auction is not of itself enough to justify the Court in refusing to confirm the sale, and I think therefore that the Court was not entitled to refuse to confirm the sale on that ground.

In view, however, of the matters which have been urged before us as to non-compliance by the appellant with the conditions of sale, I think an opportunity should be given for the questions raised to be brought before the Court if those concerned consider it advisable so to do.

We therefore set aside the order of the learned Judge and remit the case to the District Court for confirmation of the sale to become effective six weeks from the receipt of the record in the District Court, unless during that period an application is made to the learned Judge for an order refusing to confirm the sale, on grounds other than that which was relied upon when he gave the decision appealed from.

The appeal is allowed with costs.

DRIEBERG J.—I agree.

Appeal allowed.

