

Chandra Mohan Vs. Xiv Addl. District Judge and ors.

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Court : Allahabad

Decided On : Jul-13-2005

Reported in : AIR2005All365; 2005(4)AWC3863K

Judge : D.P. Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 2, 2A and 89 to 91

Appeal No. : Civil Misc. Writ Petn. No. 33415 of 1994

Appellant : Chandra Mohan

Respondent : Xiv Addl. District Judge and ors.

Advocate for Def. : M.A. Zaidi, Adv.

Advocate for Pet/Ap. : Ajay Rajendra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.P. Singh, J.

1. This petition was taken up in the revised list yesterday and was heard at length, but none appeared for the respondents. As the hearing could not be completed, it was directed to be taken up today. Today again none has appeared for the

respondents. On the request of the Court, the learned Standing Counsel has assisted it. The Court has also perused the counter-affidavit.

2. This petition is directed against an order dated 30-9-1994 by which an application under Order XXI, Rule 2 of CPC has been allowed and the order of the trial Court rejecting it has been set aside.

3. The predecessor in interest of the petitioner filed a money suit No. 451 of 1977 against the predecessor in interest of the respondent which was decreed vide judgment and order dated 24-8-1979 for a sum of Rs. 17,250/- along with cost. The decretal amount was to be paid in installments and in case of default, the petitioner was free to recover the amount through execution. As the amount was not paid, an execution No. 34 of 1980 was lodged for execution of the decree for a sum of Rs. 21,351 /-.

4. In spite of opportunities, the decretal amount was not paid and as such after attachment, the property of the judgment debtor was put to auction and only thereafter an application under Order XXI, Rule 2 CPC, alleging satisfaction of the decree outside the Court was filed which was rejected by the Court holding that on the basis of the evidence on record, the payments were not proved.

5. Aggrieved, the judgment debtor filed a revision and the revisional Court after re-appreciating the evidence has allowed the application by the impugned order.

6. The learned Counsel for the petitioner has raised several arguments, but the Court is considering only one argument which, in its opinion is purely legal and goes to the root of the matter. He has urged that once an auction sale in execution of a money decree is held, the judgment debtor cannot take recourse to Order XXI, Rule 2 as the sale can only be set aside on the grounds and conditions mentioned in Rule 89 to 91.

7. Before dealing with this legal argument, it would be appropriate to notice certain admitted facts.

8. The original money decree had granted indulgence to the judgment debtor to pay the decretal amount in installments, first of which was due on 3-10-1979,

however, he failed, leading to the lodging of the execution case. At the threshold of the execution the judgment debtor made an application dated 14-10-1981 seeking three months time for depositing the decretal amount. The time sought was granted but no deposit was made. Again vide application dated 18-1-1982 further time for satisfying the decree was sought when a month's time was granted. Nevertheless, no payment was made and when a third application for further time was made on 18-2-1982 it was rejected. Ultimately, the auction was held on 18-2-1983 and the auction purchaser deposited the entire amount in Court on 4-3-1983. An application for setting aside the auction sale dated 18-2-1983 was filed but yet no payment was made and the judgment debtor sought and was granted adjournment on 13-5-1983, 27-5-1983, 16-9-1983 and 23-12-1983 but to no avail. On 9-2-1984 the aforesaid application under Order XXI, Rule 2 CPC was made stating that the amount has been paid out side the Court and a receipt was also filed. The petitioner filed objections, inter-alia, stating therein that the son of the Judgment debtor had got executed the aforesaid payment receipt at pistol point on 29-1-1984 and this information was sent to the police officials through telegram on the same date informing them about the incident which led to the lodging of a first information report.

9. The question that falls for determination is as to whether an application under Order XXI, Rule 2 can be made at any time? Apparently there is no limitation provided for payment or satisfaction of a money decree under Order XXI, Rule 2 or 2A. On a examination of the scheme of Order XXI, it is evident that the entire procedure for execution and satisfaction of decree is provided. Firstly, the judgment debtor has the option to pay the decretal amount in the Court itself irrespective of whether the execution has been initiated. Payment can be made even out side the Court to the decree holder subject to certification by the decree holder which is evidenced by documentary evidence. Even during execution at the stage of attachment, this power can be exercised. Even after proclamation, the sale can be postponed on the application of the judgment debtor to enable him to raise the amount of decree. However, once the sale takes place and the money is deposited, third party rights are created. After such sale, even before its confirmation the auction purchaser is invested with the right which can only be resisted on the grounds and conditions mentioned in Rules 89 to 91. There is no

provision in those rules by which the sale can be set aside or execution can be dropped by payment to the decree holder by the judgment debtor. From the date of the decree till the sale in execution, the judgment debtor has several opportunities at several stages to pay the decretal amount, but granting him the right under Rule 2, even after sale, would be adding another ground for setting aside the sale, even indirectly, which the statute otherwise does not provide. Therefore, in the scheme of Order XXI, a limitation for exercise of the rights under Rule 2 is implicit and this rule will have no application after sale, i.e. to say, this right or remedy can only be resorted to till the Court sale.

10. A Division Bench of the Andhra Pradesh High Court in the case of Kolloru Kantharao v. Tammana Narayana Murthy : AIR 1991 AP24 after overruling a single Judge decision of that Court has held in paragraph No. 9 to the following effect.

'... Before the sale is ordered, the Rules provide for several opportunities for the judgment debtor to pay the amount even after attachment and proclamation of sale. But when once the properties are sold the sale can be set aside only in the manner specifically provided for and by necessary implication it follows that an application under Order XXI, Rule 2(2A) is not maintainable after the sale is conducted....'

11. I see no reason to defer with the ratio.

12. For the reasons given above, this petition succeeds and is allowed and the impugned order dated 30-9-1994 is hereby quashed and order of the executing Court dated 25-8-1992 is restored. No order as to cost.