

Kadeeja Vs. Chandrika

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Court : Kerala

Decided On : Mar-31-2004

Reported in : 2005(1)KLT434

Judge : Pius C. Kuriakose, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 85; [Limitation Act, 1963](#) - Sections 4, 5 and 9

Appeal No. : C.R.P. No. 1869 of 2002

Appellant : Kadeeja

Respondent : Chandrika

Advocate for Def. : P.G. Parameswara Panicker and; Sandeep Ankarath, Advs.

Advocate for Pet/Ap. : K.T. Sankaran,; Preethy Karunakaran,; R. Rajesh Kormath

Judgement :

ORDER

Pius C. Kuriakose, J.

1. The judgment-debtor-re vision petitioner seeks revision of the order of the execution Court by which that Court enlarged the time for making deposit of the

balance purchase money for the property that was sold in auction for realisation of the decree-debt and purchased by the 1st respondent who was the wife of the principal functionary of the 2nd respondent-decree-holder.

2. The auction was held on 4.2.2002 and the property which is portion of a larger building in which the revision petitioner is conducting an STD booth was bid in auction by the 1st respondent for a sum of Rs. 20,100/-. On the date of the auction the auction purchaser deposited a sum of Rs. 5100/-, being 25% of the purchase money in view of Rule 84 of Order XXI C.P.C. The balance purchase money together with stamp paper value which ought to have been deposited within 15 days was not so deposited. The instant application, E.A.No. 186 of 2002 dated 18.2.2002, seeking enlargement of time for such deposit by two weeks was actually filed only on 11.3.2002. The reason stated in the application was that the requisite amounts could not be deposited by the purchaser in view of the Government employees' strike which resulted in a total paralysis of the ministerial side of the Court. The application for enlargement was stiffly resisted by the present revision petitioner who contended that such applications wherein Sections 148 and 151 of the Code of Civil Procedure were invoked could not be entertained after the expiry of the period prescribed in Rule 85 of Order XXI.

3. The Court below took judicial notice of the fact that the employees had struck work on 6.2.2002 and that the strike continued till 8.3.2002 and further that on account of the total nature of the strike all Government Officers in the State including that of the Court came to a standstill. The Court noticed that the sale was conducted on a day immediately preceding the commencement of the strike and that the strike was over on 8.3.2002 which was succeeded by 9.3.2002, a Second Saturday and 10.3.2002, a Sunday. It was accordingly found by the Court that the 1st respondent had no chance at all to deposit the requisite amounts within the statutory period. According to the Court, the auction purchaser was not at fault and it was unjust to make her suffer for somebody else's fault. Observing that there 'are always exceptions to the stringencies of the rules' and further that 'the circumstances herein warrant an enlargement of time for deposit of the balance amount' the Court allowed the application. Incidentally the Court has also observed that the revision petitioner did not make deposit of the requisite amounts

under Rule 89 and that even at that stage no offer was made by the revision petitioner for making such deposits.

4. Heard Sri.K.T.Sankaran, learned counsel for the revision petitioner and Sri. Sandeep Ankarath, learned counsel for the 1st respondent-auction purchaser extensively.

5. Sri. K.T.Sankaran submitted that the Court below did not have jurisdiction to enlarge the period stipulated for deposit of balance purchase price in view of the mandates of Rule 85 of Order XXI C.P.C. The language employed in the rule, learned counsel stressed, was 'shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the date of the sale of the property'. The period of limitation, learned counsel pointed out, started running from the date of auction sale and any subsequent disability or inability would not stop the running of time and referred in this context to Section 9 of the Limitation Act. Section 5 of the Limitation Act did not apply. Section 148, counsel submitted, will apply only to cases where time is fixed by the Court or granted by the Court and not to cases where the period for purposes of a particular act is fixed statutorily. As regards the view of the Court below that it could not have been possible for the auction-purchaser to have remitted the amount within the statutory period, counsel submitted that the Government employees' strike was not a lightning strike. On the contrary, the same was a strike of which everybody in the State was having sufficient notice to commence on 6.2.2002 and to go on indefinitely. Had the 1st respondent been vigilant, she would have facilitated deposit of the entire amount without waiting for the last day of the period allowed by law.

6. Apart from assailing the order of the Court below on the grounds of jurisdiction, Mr. Sankaran also submitted that allowing the impugned order to remain will be to perpetuate an injustice. The market value of the property was several times more than the purchase price presently deposited by the 1st respondent. The purchaser was none other than the wife of the Manager of the decree-holder-society and the whole thing was arranged in such a way that the property could be purchased by the Manager (virtually the decree-holder himself) in the name of his own wife for a pittance. The revision petitioner, according to learned counsel, was conducting an

STD booth in the property now sold and the income there from is the principal means of livelihood for the revision petitioner and her family. Sri. K.T.Sankaran fortified his submissions on the authority of various judicial precedents. Learned counsel referred me to the decision of the Supreme Court in Manilal Mohanlal v. Sayed Ahmed, AIR 1954 SC 349, wherein Ghulam Hasan, J. on behalf of the Bench consisting of Mahajan C.J., Bose J. and himself has ruled that the provision under Order XXI Rule 85 that balance purchase price shall be paid within a period of 15 days is mandatory and the effect of non-payment will be that the defaulting purchaser shall forfeit all his claims over the property. The very same decision was relied on by the learned counsel to support his argument that inherent powers of the Court under Section 151 are not to be invoked for circumventing the mandates of Order XXI Rule 85. The sale in the instant case stands 'wiped out' in the language of the Supreme Court, according to counsel. Another decision of the Supreme Court reported in Boota Mal v. Union of India, AIR 1962 SC 1716, was relied on by Sri.Sankaran in support of the proposition that the statute of limitation is a statute based on the public policy of repose and quietus to litigations after a prescribed period and equitable considerations are foreign while construing the provisions of the said statute. Mr. Sankaran referred to yet another relatively recent decision of the Supreme Court in Gangabai Gopaldas Mohata v. Fulchand, AIR 1997 SC 1812, reiterate his submission that noncompliance with the provisions of either Rule 84 or Rule 85 of Order XXI in the matter of deposit of sale amount shall render the sale void.

7. Sri.Sandeep Ankarath, learned counsel for the 1st respondent-auction purchaser submitted that the revision petitioner does not have a case that the sale which was conducted on 4.2.2002 is vitiated due to any reason as becomes evident from his own conduct in not applying for cancellation of the sale under Order XXI Rule 90 C.P.C. According to learned counsel, his client through counsel had approached the learned Presiding Officer of the Court even before the expiry of the statutory period of 15 days offering to remit the cash in Court and the learned Officer for want of staff only directed the auction-purchaser's counsel to file the instant application as soon as the strike was over. This, according to learned counsel, explains why the application bears a date within the statutory period, though filed actually after the strike was called off. Technicalities of law

ought to pave way for doing substantial justice between the parties on a given cause and that is what was exactly done by the learned Munsiff, according to counsel. Answering the submission of Mr. Sankaran that the value of the property is much more than the price for which the same was purchased by the 1st respondent, Mr. Sandeep said that such a plea was not raised at or prior to the stage of settlement of sale proclamation and that at any rate such a plea could arise only in a proceeding for cancellation of sale. Mr. Sandeep did not lag behind in citing decisions. On the authority of the decision of the Supreme Court in C.F. Angadi v. Y.S. Hirannayya, AIR 1972 SC 239, a decision authorised by K.K. Mathew, J. on behalf of himself and C. A. Vaidialingam, J., Mr. Sandeep submitted that if the due date for performance of a thing in judicial proceedings happens to be a holiday, actual performance on the day when Court reopens will have to be taken as performance on the due date itself. Holiday, according to learned counsel, means nothing more than a day when the Court remains closed and in the instant case the Court below has observed that the Court remained virtually closed on all days prior to the day when the actual deposit was made. Expounding the principle that no person shall be compelled to do things which are impossible and that act of Court shall not cause any prejudice to anybody, learned counsel relied on the decision of a Division Bench of the Assam High Court in Basanta Kumar v. Lakshma Moni, AIR 1968 Ass. and Nag. 57. Basanta Kumar (supra) was a case where the local Civil Court was continuously picketed during the period from 19th of a given month to 29th and no Judge or officer empowered to receive plaints were able to enter the premises making it practically impossible for the plaintiff to present the plaint which was to get barred by limitation on the 28th. The Division Bench of that Court noticed the impossibility of preferring the plaint on the 28th and held that the plaint filed after the picketing was over though beyond the period of limitation will be within the period of limitation since the plaintiff was not at all to blame for the picketing and it was impossible for the plaintiff and his counsel to have presented the plaint while picketing was on. Mr. Sandeep relied also on an observation of a Division Bench of the Patna High Court in Badri Singh v. Kalyan Shroff (AIR 1956 Patna 522) and submitted that for the purpose of Section 4 of the Limitation Act, a Court will have to be deemed to be closed if the presiding officer of the Court is absent and there is no other officer

competent to receive such application. The learned counsel placed strong reliance on the observations of the Supreme Court in para 9 of its judgment in *Balram v. Ham Singh*, AIR 1996 SC 2781, in support of his submission that a party shall not be allowed to take advantage of his own laches in not raising any objections to the valuation of the property sold and in not applying for cancellation of the sale after the sale had taken place. The decision of the Bombay High Court in *Rama v. Sumitrabai*, AIR 1979 Bombay 14, was also relied on by Sri. Sandeep in support of his argument that strike by Court staff and the Court's inability to accept money will certainly come within the Explanation to S .4 of the Limitation Act and therefore the view of the Court below that the deposit was in time was certainly justified.

8. In view of the principles laid down in *Manilal Mohanlal's case* and *Boota Mal's case* (supra), it cannot be gainsaid that the provisions of Rule 85 of Order XXI are mandatory and failure of the auction purchaser to deposit the balance purchase money within the statutory period of 15 days will result in cancellation of the sale itself. Applications under Order XXI having been specifically excluded from the purview of Section 5 of the Limitation Act, it will have to be stated in view of Section 9 that once the period of limitation starts running, no subsequent disability or inability to institute a given proceeding will stop the running of time as regards the said proceeding. In the instant case the period of limitation started running from the date of the sale and it expired obviously at a time when the functioning of the Court had come to a standstill on account of the total strike of the Court staff. In other words, the period of limitation expired at a time when the Court remained closed for the purpose of Section 4 of the Limitation Act. I shall not be misunderstood of having laid down that in all cases where all the members of the Court staff except the presiding officer are on strike, it should be taken that the Court remains closed. But on the facts of the present case where the learned Munsiff who was in a better know of things himself has observed that it was impossible for anybody to have deposited the balance price during the period of strike.

9. I adopt the reasoning of the Bombay High Court in *Rama* (supra) and hold that the period of limitation for making deposit actually expired while the strike was on and that since the deposit was made on the working day next after lifting of the

strike, the deposit was made within time. The Supreme Court decisions cited at the Bar by Sri. K.T.Sankaran all lay down that Court has no power to enlarge the period of 15 days prescribed by Order XXI Rule 85 for making the balance deposit. There cannot be any quarrel about that proposition and on the view I am taking in the instant case, it is not necessary for me to consider whether on considerations of substantial justice, the Court has power to allow enlargement of time. I am not however hesitant to opine that in situations where the working of a Court becomes paralysed to the extent of nobody being able to file anything and even the presiding officer becomes helpless as in the present case, there will be justification for treating the day in question as a day when the Court remained closed for the purpose of Section 4 of the Limitation Act. Significantly the submission of Mr. Sandeep that cash was actually tendered before the learned Munsiff even before the expiry of 15 days and the learned Munsiff only instructed counsel to make the deposit after the strike was over was not disputed before me by Sri. Sankaran.

10. For the above reasons, I am unable to say that the impugned order is liable to be interfered with in revision.

11. However, there is another reason which justifies cancellation of sale. A reading of the impugned order itself shows that the learned Munsiff was all willingness to set aside the sale if only had the present revision petitioner made an application under Order XXI Rule 89 accompanied by the requisite deposits and sale commission. The submissions of Mr. Sankaran regarding the gross under valuation in the sale and also regarding the close relationship between the chief functionary of the decree-holder and the auction purchaser were appealing. Almost admittedly the income presently derived by the revision petitioner from the business carried on by her in the auctioned property is the principal source of livelihood for her and her family. Strictly speaking, sale ability or otherwise is not a matter which could be agitated in the present proceedings and to a considerable extent the revision petitioner herself is to blame for what has happened. Mr. Sankaran submitted that the reason as to why his client did not file any application for setting aside the sale under Order XXI Rule 89 was that she got the advice and that too on the authority of the Supreme Court decisions cited before me that the Court below is very unlikely to allow the application and therefore it would be

unnecessary to apply for setting aside the sale. Having regard to Article 142 of the Constitution, the submission is very convincing.

12. On considerations of justice and indulgence, I am therefore inclined to allow the revision petitioner to salvage her property, but only on condition that apart from the amount actually deposited by the 1st respondent before the Court below, all loss sustained by that respondent on account of the sale will be made good by the revision petitioner. I am certainly aware that procedural propriety demands that I send the matter back to the Execution Court giving opportunity to the revision petitioner to move that court under an appropriate provision for cancellation of sale. But since such a course will result in unwelcome delay even from the point of view of the 1st respondent, I am proceeding to set aside the sale by my present order itself. Accordingly the C.R.P. is disposed of on the following terms:-

The sale of the revision petitioner's property which took place on 4.2.2002 will stand set aside on condition that the revision petitioner pays by cash a sum of Rs. 29,000/- to the 1st respondent through her counsel in this Court or in the Court below within two months from today. The amount of Rs. 20,100/- presently under deposit towards sale price will go in liquidation of the decree-debt. In the circumstances of this case, there will be no further order as to costs.

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