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SooperKanoon Citation : sooperkanoon.com/823175

Court : Chennai

Decided On : Aug-09-1996

Reported in : 1996(2)CTC464

Judge : S.S. Subramani, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 21, Rule 89;
[Limitation Act, 1963](#) - Sections 5

Appeal No. : Civil Revision Petition No. 2036 of 1989

Appellant : Ponnusamy and anr.

Respondent : R. Sugumar and anr.

Advocate for Def. : M.V. Krishnan, Adv.

Advocate for Pet/Ap. : P. Wilson, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.S. Subramani, J.

1. This revision is by the judgment-debtor in O.S. No. 118 of 1985, on the file of the District Munsif s Court, Manapparai.

2. In execution of the money decree, the property of the judgment-debtor was brought to sale and the same was sold in court auction on 23.12.1987. An application to set aside the sale was filed on 22.2.1988 under Order 21, Rule 89, C.P.C. Along with the application, a lodgment schedule was also filed to deposit the entire amount and the poundage, but the same could not be deposited on account of boycott of courts by advocates, and the amount was deposited the next day, i.e., 23.2.1988. Taking into consideration the boycott of Courts by Advocates, the executing Court held that since the entire amount with commission had been deposited, the sale was liable to be set aside.

3. The matter was taken before the lower appellate Court in C.M.A.No.79 of 1988, on the file of District Judge, Tiruchirappalli. The lower appellate Court also found that the entire amount due to the decree holder has been deposited and that there is no deficiency in the amount of deposit, but the lower appellate Court was of the view that there is delay of one day in depositing the amount, and the boycott of Courts by advocates cannot be taken as a ground for extension of time, since Section 5 of the Limitation Act has no application. In that view of the matter, the lower appellate Court allowed the appeal and the application to set aside the sale was dismissed as belated. It is against the said Order, this Revision is filed.

4. Originally, this revision was dismissed as not maintainable. Initially it was represented that this revision is against an Order setting aside a sale. On such representation, this Court held that since an appeal is entertainable, this revision could not be maintained. Thereafter, a review application was filed stating that the revision was filed against the appellate Order and, therefore, the Order already passed by this Court requires re-consideration. The review application was allowed and thereafter learned counsel on both sides were heard on the main revision petition.

5. I agree with the finding of the lower appellate court that the provisions of the Limitation Act will not apply for an application under Order 21, Rule 89, C.P.C. But, when we consider the interest of justice, I feel that the application to set aside the sale should be allowed.

6. It is not disputed at the time of argument that the judgment-debtor had entrusted the amount to his counsel, but he could not deposit the same in Court in view of the boycott of Courts by advocates. Next day, the entire amount was deposited into Court. The client can only rely on the advocates for taking necessary action, and I do not find any laches on the part of the client in this case. The advocates have got a responsibility to protect the interests of their clients. When the Court cannot find any laches on the part of the judgment-debtor, his only asset should not be allowed to be taken away in court auction.

7. In the interest of justice, I feel that this is a fit case where the sale has to be set aside, and I do so accordingly.

8. If the technical view taken by the lower appellate Court is accepted by this Court, then the only remedy open to the judgment-debtor will be to file a suit against the advocate concerned, for professional misconduct. The advocate, while boycotting the Court, has not taken into consideration the interest of his client for which he was engaged. Instead of driving the judgment-debtor to another suit which will again drag on for several years, I feel that this is a fit case where the sale has to be set aside, and I do so accordingly.

9. Learned counsel for the second respondent argued that if this Court is inclined to set aside the sale, his client (auction purchaser) may be allowed interest from the date of sale till date of payment. I do not think such an order is required in this case. Once it is found that the judgment debtor is not at fault, he should not be further burdened with interest on the amount.

10. In the result, the revision petition is allowed, however, without any order as to costs.