

(1967) 09 AHC CK 0032
In the Allahabad High Court
Case No : Civil Revision No. 89 of 1967

Agrawal Pathshala Mohalla Mandi Bans, Moradabad	APPELLANT
Vs	
Karim Bux and Others	RESPONDENT

Date of Decision : 14-09-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 115

Citation : AIR 1969 All 139

Hon'ble Judges : S.N. Singh, J

Bench : Single Bench

Advocate : K.C. Agrawal, for the Appellant; R.B. Misra, for the Respondent

Final Decision : Allowed

Judgement

S.N. Singh, J.—This revision is directed against an order rejecting the objection under the proviso to Order 21, Rule 58 C. P. C.

2. It appears that the property in dispute was attached on 6th January 1964 and an objection to this attachment was filed on 31st January 1964 by the petitioner Agrawal Pathashala. After the filing of this objection notice was issued and in pursuance of that notice on 4th April 1964 an objection was filed on behalf of the decree-holder. Thereafter the case was listed on various dates and the same could not be taken because of other work. For some time the case could not be disposed of because of the death of one of the judgment-debtors and pendency of substitution application. More than two years after when the case was taken up on 13th August 1966 the learned Munsif issued notice to the petitioner to show cause why the objection be not dismissed under the proviso to Order 21, Rule 58 C. P. C. The proviso is as follows:--

"Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed."

3. The petitioner filed an application in reply to the show cause notice and submitted that the petitioner was an institution and that it did not know about

the attachment, it was stated that as soon as the attachment was known to the petitioner it called a meeting of the members of the institution and thereafter having passed the resolution filed the present objection within five days of the passing of the resolution. The application of the petitioner was objected to by the decree-holder. Thereafter the Munsif without recording any evidence and without applying his mind as to what was meant by the expression "designedly and unnecessarily delayed" he rejected the objection under the proviso to Order 21, Rule 58 C. P. C. without going in the merits of the claim.

4. Against this order the present revision has been filed. It has been contended on behalf of the petitioner that the Munsif was not justified in summarily rejecting the objection on the ground of its being designedly and unnecessarily delayed. It was submitted that this could have been done at the preliminary stage. When the objection was filed, the Munsif without issuing notice to the decree-holder could have called upon the petitioner to show cause why the claim be not rejected under the proviso. It was submitted that once the Munsif started investigation the power under the proviso could not be exercised. Reliance was placed on the cases of Surendra Nath v. Rajni Kanta Das AIR 1917 Cal 9 (2) and Parasmal v. R. S. Rekhchand Gopaldas Mohta 1959 MP LJ 67 wherein the Madhya Pra-desh High Court held "that the power of summarily rejecting an objection under the proviso to Order 21, Rule 58, C. P. C. on the ground of delay has to be exercised before commencing the investigation. That power cannot be exercised if the Court has started investigation of the case on merits. If this power is not exercised before commencing the investigation, the Court has to decide the case on merits. It has no inherent power to reject a claim or objection on the ground of delay."

5. My attention was also drawn to the amendment by this Court. This Court directed the addition of the following words at the end of Sub-rule (2):--

"or may in its discretion make an order postponing the delivery of the property after the sale pending such investigation. And in no case shall the sale become absolute until the claim or objection has been decided."

It was contended that by the addition of this Sub-rule this Court considered that the objection could be filed even after the sale had taken place. Learned counsel submitted that when there was no period of limitation prescribed for the filing of an objection and sale in pursuance of the attachment could not be held within a period of one month thereof, a period of one month should be taken to be a reasonable time within which an objection under Order 21, Rule 58 C. P. C. could be filed and such an objection should not be held to be designedly and unnecessarily delayed.

6. As against this submission of the learned counsel it was submitted by the learned counsel for the opposite parties that the court having considered the question of delay under the proviso after having afforded opportunity to the objector the order was not revisable. Reliance was placed on the cases of Mt.

Rajeshwari Bibi and Others Vs. B. Hari Ram, and AIR 1937 268 (Oudh) It was also submitted that the word "investigation" used in Order 21, Rule 58 C. P. C. would not mean merely issuing of notice. According to the learned counsel investigation starts when evidence in support of the objection was taken and not before it. It was argued that in this case before the Munsif proposed to start investigation he issued notice and without actually starting the investigation considered the question of unnecessary delay and rejected the objection on that ground. His submission is that howsoever erroneous that finding may be it has to be accepted in revision and the revision in the instant case was not maintainable.

7. I have considered the respective submissions of the learned counsel but in my opinion the contention put forth on behalf of the petitioner has force. The statement of facts given above would show that the objection had been filed only 25 days after attachment and the case of the petitioner was that it came to know about this objection much after the attachment and it was only five days after the knowledge that the objection had been filed. The learned Munsif does not appear to have considered as to when did the petitioner come to know about the attachment. It appears that he assumed that the petitioner came to know of it only five days before filing the actual objection. He considered that even if the petitioner filed objection after five days of the passing of the resolution it was designedly and unnecessarily delayed. In order that one may come to the conclusion that an objection is designedly and unnecessarily delayed there must be some evidence to the effect that the delay in filing the objection was intentional and with some purpose. Filing of an objection five days after knowledge cannot ordinarily be said to be unnecessarily and designedly delayed. Except for the objection and the counter objection of the parties there is no evidence nor has the Munsif shown as to what was the circumstance which impelled him to come to this conclusion.

8. When the decree-holder at the first instance filed objection on 5th May 1964 he did not object to the filing of the objection on the ground of delay. He had contested the objection on merits and had not said a word about limitation.

9. I agree with the learned counsel for the petitioner that when there is no time limit a reasonable time has to be considered and when the objection was filed within five days of the knowledge it could not be considered to be unnecessarily and designedly delayed. In considering the question of designedly and unnecessary delay the learned Munsif has not applied his mind to this aspect at all. It is true that he couched his order in the same words as have been mentioned in the proviso to Order 21, Rule 58, C. P. C, There is nothing on the record to suggest as to how he came to that conclusion. There does not appear to be any basis in evidence for the conclusion arrived at by the learned Munsif. I am also of opinion that in this case investigation had started when the present order was passed. The objection had been filed on 31st January 1964. Notice was issued on the same date to the decree-holder and thereafter objection was filed on the 4th April 1964. Dates were fixed for finally disposing of the matter

but for one reason or the other the case could not be disposed of. After a lapse of two years to dispose of the matter summarily without deciding the merits in my opinion is not a proper exercise of the discretion by the learned Munsif. The decisions relied on by the learned counsel for the opposite parties in my opinion do not help the opposite parties.

In the case of Mt. Rajeshwari Bibi and Others Vs. B. Hari Ram, an objection had been summarily rejected on the ground of delay without affording opportunity to the petitioner of that case. This Court allowed the revision and set aside the order on the ground that without giving opportunity to the petitioner it was not at all proper for the trial Court to have rejected the objection. In the body of the judgment no doubt there is an observation that if the Munsif had afforded opportunity to the petitioner and he had considered the question of unnecessary delay then the revision would not have been maintainable. Reliance is placed on this observation of this Court but this observation has to be considered in the light of the decision of that case and this observation alone cannot give strength to the objection of the opposite parties. To the same effect is the case of AIR 1937 268 (Oudh) In my opinion the learned Munsif acted illegally and with material irregularity in the exercise of jurisdiction inasmuch as there was no evidence in support of his finding about unnecessary delay and he also failed to exercise jurisdiction in rejecting the objection without going into the merits of the case. Thus this case is covered both by Section 115(b) and (c) C. P. C.

10. In the result this revision is allowed, the order of the learned Munsif summarily rejecting the objection is set aside and he is directed to decide the objection on merits. There will be no order as to costs.