**(2003) 04 AP CK 0059**

**In the Andhra Pradesh High Court**

**Case No :** C.R.P. No. 5244 of 2002

Akula Srinivasa Rao and Others — APPELLANT

Vs

G. Venkateswara Sarma — RESPONDENT

**Date of Decision :** 08-04-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1(2), Order 21 Rule 85, Order 21 Rule 86, Order 21 Rule 89, Order 21 Rule 90

**Citation :** AIR 2003 AP 407 : (2003) 4 ALD 550 : (2003) 2 APLJ 427

**Hon'ble Judges :** C.Y. Somayajulu, J

**Bench :** Single Bench

**Advocate :** Subbarao Korrapati, for the Appellant;

**Final Decision :** Dismissed

# Judgement

C.Y. Somayajulu, J.—This revision petition arises out of an order dt.21.6.2002 returning the petition under Order 21 Rule 86 C.P.C. filed by the revision-petitioners/Judgment-debtors to set aside the execution sale held by the Court below.

2. The case of the petitioners is that their properties were brought to sale in the E.P. filed by the decree-holder in execution of decree obtained against them and that they do not know whether the bidder deposited 25% of the amount of the purchase money or not. On the date of auction and that they came to know that the auction purchaser has to pay the full bid amount into Court on or before 15th day from the sale of the property and that the auction purchaser in this case did not do so and so the sale is liable to be set aside under Order 21 Rule 86.

3. The said petition was returned by the office with the following endorsement on 21.6.2001:

The purchaser deposited Rs.13,76,593/- on 1.6.2002. Hence this petition not maintainable. May be returned.

On the same day i.e., 21.6.2001 counsel for the revision petitioners in the trial court represented the petition with the following endorsement:

"Handing over of Banker''s Cheque or other instrument for purchase money is not payment into Court. Therefore provision of law is correct. Besides that inherent powers u/s 151 CPC are also invoked. If any doubt arises may be called at bench"

On 28.6.2002 the petition was again returned with the following endorsements:

"As the total sale consideration amount is paid already as ordered. Now this petition is maintainable".

Along with this revision the petition, presented by the revision petitioners into the court below is filed. It contains an unsigned endorsement dated 2.7.2002, which reads:

"The mode of payment made by the auction purchaser is not contemplated by CPC. Hence, it is payment properly made. Hence, it is payment properly made. Hence petition is maintainable".

Obviously the petition with the above endorsement was not represented into the Court below, because there is no court seal, or return endorsement made by court subsequent to 28.6.2002 return on the petition of the revision petition. In fact the grounds of revision shows that this revision is preferred against the return dated 21-6-2001, because in the revision it is stated

"...... aggrieved by the docket order dated 21.06.2001 passed by II Additional Senior Civil Judge''s Court, Warangal.

4. Rule 86 of Order 21 CPC reads:

In default of payments within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Rule 85 of Order 21 CPC, which precedes Rule 86, lays down that the full amount of purchase money has to be paid by the purchaser into Court before the Court closes on the 15th day from the date of sale of the property.

5. The contention of the learned counsel for the petitioner is that since payment through banker''s cheque is not contemplated by C.P.C. or Civil Rules of Practice, payment by way of Banker''s Cheque by the auction purchaser cannot be treated as payment of money into court and so the auction sale is liable to be set aside.

6. Rule 86 of Order 21 CPC, empowers the Court suo motu to set aside an auction sale, in case the auction purchaser defects in depositing the entire bid amount on or before the 15th day of auction. So it is the Court that has to be satisfied on the question whether if the auction purchaser deposited the entire

 

amount or not within 15 days of auction. The judgment debtor can only bring to the notice of the Court that auction purchaser did not deposit the money as contemplated by Rule 85 of Order 21 CPC. Thereafter, it is for the Court to act. When the Court is satisfied that the auction purchaser deposited the money within time question of the judgment debtor making a prayer to the Court under Rule 86 of Order 21 CPC to set aside the sale does not arise. A judgment debtor can seek to set aside Court auction sale either under Rule 89 or Rule 90 of Order 21 CPC only. It should not be forgotten that the fact whether the auction purchaser deposited the entire bid amount within 15 days of auction or not would be within the knowledge of the Court only. It is not known as to how or on what basis the revision petitioners is saying that the auction purchaser paid the money by way of a banker''s cheque, when the return dated 21-6-2001 shows that the purchaser deposited the amount on 1-6-2002. Thus, there is nothing on record to show that in fact the balance amount due from the auction purchaser was deposited by way of a banker''s cheque in Court.

7. The contention of the revision petitioners that payment by way of banker''s cheque (or draft) is not contemplated by Civil Rules of Practice cannot be accepted because Rule 224 of Civil Rules of Practice and Circular Orders reads as follows.

Payment into the Court in satisfaction of decree:

1. Except when payment is made to the decree-holder under Rule 230, a person paying money or bringing property into court in satisfaction of decree shall be given notice on such payment or deposit to the judgment-creditor.

2. Where money due under a decree is remitted to Court by the judgment-debtor or any one on his behalf by money order or through a bank or by other recognized mode and the judgment-debtor or his advocate is not available to pay the process fee for the notice required to be issued under Rule 1(2) of Order 21 of the Code, a notice may be issued initially at Court''s cost, and the same shall be subsequently recovered from the judgment-debtor. (Underlining mine).

It is relevant to mention that ''Banker''s Cheque'' in fact is not a cheque, but is a draft issued by one branch of the same bank in a town or city and it''s another branch in the same town or city. If the same is issued on a branch outside the city or town it would be called ''draft'', which is but a ''bill of exchange''. It is well known that a banks issue a ''drafts'' or ''banker''s cheques'' only after receipt of equivalent money for which they are issued, besides commission. There is possibility of a cheque being dishonoured, but a draft or banker''s cheque, which is genuine, can never be dishonoured. It is not the case of the revision petitioners that the banker''s cheque allegedly given by the Auction Purchaser was not a genuine one or was dishonoured.

8. Even assuming that what was issued by the auction purchaser was a cheque, it is settled law that if the cheque is honoured, it amounts to a valid payment. In Mohideen Bi and Others Vs. Khatoon Bi and Others, , it is held that issuing of a

 

cheque is as good as payment in cash. As long back as in 1954 the Supreme Court in The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, held that when payment is by way of a cheque, on its encashment the payment relates back to the date as receipt of the cheque. In K.SARASWATHY VS. P.S.S.SOMESUNDARAM CHETTIAR 1990 (67) COMP CAS 67, order for payment of money within a specific date was complied with by depositing a cheque for that amount on the last day fixed by the Court. The cheque was honoured in due course. It was held that the Court order was substantially complied with. In this case, since the Court endorsement shows that purchaser deposited the entire amount, even if the payment was made through a banker''s cheque, the payment relates back to date on which the banker''s cheque was deposited into Court. As per the Court endorsement the deposit was made on 1-6-2002. Though the auction was held on 22-4-2002 since Courts were closed for Summer Vacation from 29-4-2002 to 31-5-2002, the deposit made on 1-6-2002 has to be taken to be within time, because, it is well known that if the Court or office is closed on the 15th day of sale due to holiday, the purchaser can make the deposit on the next day or reopening day. See ARI CHETTY, IN RE 13 MAD.L.J. 271 AT 272 (D.B.).

9. All these apart payment through banker''s cheque or draft is not prohibited by C.P.C. or Civil Rules of Practice, and so payment by banker''s cheque or draft can be said to be a valid payment. Therefore, the contention of the petitioners that payment made by way of banker''s cheque is not valid payment has no substance and therefore I find no merit in this revision petition. Therefore, the revision petition is dismissed at the admission stage.