**(1961) 09 AP CK 0012**

**In the Andhra Pradesh High Court**

**Case No :** A.A.A.O. No. 92 of 1958

Ambati Raghavalu APPELLANT

Vs

Mova Venkamma and Others RESPONDENT

**Date of Decision :** 29-09-1961

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 86, Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 91

Provincial Small Cause Courts Act, 1887 — Section 17

**Citation :** AIR 1962 AP 334

**Hon'ble Judges :** P. Chandra Reddy, C.J;Narasimham, J

**Bench :** Division Bench

**Advocate :** G. Suryanarayana Murthy, for the Appellant; K.B. Krishnamurthy, for 2nd Respondent, for the Respondent

**Final Decision :** Dismissed

## Judgement

P. Chandra Reddy, C.J.—The Civil Miscellaneous Second Appeal is referred to a Bench by Qamar Hasan, J., as he thought that the judgment of a Single Judge of his Court in Mudrageda Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, requires reconsideration.

2. The facts leading up to this appeal are briefly these. A decree was obtained against the appellant in O. S. No. 179 of 1948 and, in execution of that decree, the property was brought to sale on 3-9-1956 and the second respondent purchased the property, he being the highest bidder. He paid 25 per cent of the sale price on that day itself and the balance of the sale price on 17-9-1956. As regards the stamp for the certificate, he applied for challan on 17-9-1956 but it was not issued till 20-9-1956. As soon as he collected the challan, he deposited the amount required for the stamp on 20-9-1956 itself. The judgment-debtor presented an application to set aside the sale contending that as the 2nd respondent did not furnish non-judicial stamp before 18-9-1956 as required by the relevant rules of the Civil Procedure Code, the property should be re-sold.

This application of the judgment-debtor was dismissed by the District Munsif who took the view that the auction-purchaser had not committed any default in depositing the cost of the general stamp, as he had applied for the challan in time and paid the money into Court immediately after the issue of the challan. The judgment-debtor carried an appeal to the Subordinate Judge''s Court, Masulipatam. The Subordinate Judge in agreement with the opinion of the trial Court disallowed the appeal. Aggrieved by the decision of the lower appellate Court, the judgment-debtor has preferred the present Civil Miscellaneous Second Appeal.

3. The point presented in support of this appeal is that as the auction-purchaser failed to supply the general stamp for the certificate or to deposit the value or amount required for the stamp as required by Order XXII Rule 85 , the sale held on 3-9-1956 was ineffective and the Court was bound to re-sell the properties. It is argued that the rule stated in Mudrageda Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, is not sound and is opposed to the terms of Rule 85 which are mandatory and not directory as thought by the learned Judge who decided Mudrageda Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, This contention has to be given effect as Rule 85 has employed mandatory language and the Omission to satisfy the requirement of Order XXI Rule 85 vitiates the sale. The effect of the non-observance of the terms of Rule 85 is set out in Rule 86. That rule calls upon a Court to order a resale in the event of the deposit not being made within specified time.

4. In Mudragada Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, preferred against Mudrageda Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, it was decided by a Bench of this Court of which one of us was a member that failure to make the deposit within the time prescribed by Order XXI R. 85 C. P. C. renders the sale a nullity. The Bench disagreed with the opinion of the learned Judge that no penal consequences would flow from the non-deposit of the general stamp as they are confined only to non-payment of the balance of the purchase-money since Rule 86 which prescribes the procedure in default of payment would apply only to Rule 85 as it stood prior to the amendment by the Madras High Court and which did not refer to the general stamp for certificate. High Courts are empowered to amend the rules and it is in pursuance of this authority that the Madras High Court included the furnishing of general stamp or the amount required for the purchase of that stamp in Rule 85. So that rule as amended attracts Order XXI Rule 86. It follows that it is obligatory on the part of the auction-purchaser to satisfy the conditions of Order XXI Rule 85 and any default in that behalf will result in the properties being re-sold.

5. The only question that survives is whether the application for challan within time saves the sale from the operation of Rule 86. It is urged by Sri Venkatesam, learned counsel for the appellant, that since Rule 85 makes it compulsory for the auction-purchaser to deposit the amount mentioned there and the mere

 

application for challan in time would not give him any protection. It is obligatory on the part of the auction purchaser to make the deposit in time irrespective of whether a challan could be obtained within the specified time or not.

6. In solving the problem thus posed, we have to read the provisions of the Civil Rules of Practice which have a bearing on this enquiry: Rule 157 says:-

A person desirous of paying money into Court hereinafter called the payer, shall bring into Court a lodgment schedule in Form No. 57, headed with the cause title of the suit, appeal, or matter and the particular account therein, if any, to which the money is to be credited and stating the decree or order if any in pursuance of which the payment is made, or the reason for the payment, and the several sums and the total amount to be paid into Court. An order for lodgment and counter foil receipt in form No. 58 stating the date of issue and bearing a serial number, shall then be filled in, except as to the date of payment and the signature of the receiving officer, or the officer of the Court, and issued to the payer. The particulars of currency notes, coins and cheques shall be noted on the reverse side of the form of the challan accompanying each remittance.

Rule 158:- The payer shall note the particulars of currency notes, coins, and cheques on the reverse side of the form of the challan accompanying each remittance and deliver the money, and/or the cheques and the order and counter foil receipt to the Bank or Treasury officer mentioned therein, who shall retain the order and return the receipt, duly signed and dated to the payer, who shall return the said receipt to the Court.

7. It is clear that these rules insist on a challan being obtained before payment could be made into Court. Without a challan, a deposit could not be made.

8. Thus, this is the first step in the process of making the deposit. If the Court does not issue the challan in spite of the application for it by the party before the expiry of the prescribed period, he is not in a position to fulfil the obligations cast by Rule 85. So, the non-observance of the terms of Rule 85 is not due to any default or negligence on his part but due to causes beyond his control. It is inaction or the erroneous act of the Court that it is responsible for the inability of the party to deposit the money into Court. It is in such a situation that the maxim actus curiae neminem gravabit i.e., an act of the Court prejudices no man comes into play. When a litigant is unable to comply with the requirements of a statute not because of his own fault but on account of the action or inaction of a Court, the principle underlying the maxim is attracted.

9. This doctrine has been applied by Courts in India in different situations. In Subramania Aiyar v. Ramaswami Aiyar 1946 1 Mad LJ 395 : (AIR 1947 Mad 2) a Bench of the Madras High Court relied on this maxim in a case where a party could not make the payment in the prescribed time under O. XXI R. 89, because the challan was not issued though applied in time till a date beyond the one indicated in Rule 89 and the Presiding Officer was not there to receive it.

 

10. Mahomed Akbar Zaman Khan v. Sukhedeo Pande, 13 Cal LJ 467 also illustrates this maxim. The topic is dealt with by Mookerjee, J., elaborately. That was also a case of the inability of a party to give effect to the requirement of Order XXI Rule 89. 1946 1 Mad LJ 395 : (AIR 1947 Mad 2) followed this ruling.

11. AIR 1934 875 (Lahore) is another instance of the same rule.

12. In Koilpillai Samban Vs. Sappanimuthu Samban and Another, ), Ramesam, J., extended this maxim to section 17 of the Provincial Small Cause Courts Act. There on account of the delay in issuing the challan, the deposit was made after the expiry of thirty days. The learned Judge opined that an application for challan was equivalent to a deposit. Sri Venkatesam, counsel for the appellant, contests this proposition and argues that this is too broadly stated. We do not think that any exception could be taken to the principle enunciated therein.

13. This maxim was applied by Kumaraswami Sastry, J., in Gopalakrishna Pillai and Others Vs. Kunjithapatham Pillai and Others, to a case where a party presenting an application to set aside an election and who was bound to make a deposit under Rule 4 of the Election Rules framed by the Government under the Madras Local Boards Act could not do it because of the delay in the issue of a challan and for reasons beyond his control. The learned Judges took the view, that the payment must be deemed to have been made on the date the money was produced and the challan obtained.

14. Munna Lal Vs. Radha Kishan, ) accords with this principle.

15. The learned Counsel for the appellant invites us to follow M. Krishnaji Reddiar Vs. Muthuveera Reddiar and Another, which was also a case similar to Gopalakrishna Pillai and Others Vs. Kunjithapatham Pillai and Others, There a party could not comply with the requirements of Rule 4 of the Rules framed by the local Government for the conduct of elections to District Boards in regard to a deposit because he could not obtain a challan within time. The challan was given to him only at 2-45 p. m. but he could not make the deposit before 3 p. m. as he could not reach the bank which was at a distance of 2 1/2 to 3 miles and the money could be paid into the Bank only on the next day. The learned Judges thought that there was no scope for the applicability of the maxim as it was easy for the party to have returned to the Court as he had ample time to do so and to have tendered the money to the Judge under Rule 133, which is the predecessor of Rule 159, but nothing of the sort was done, and in such circumstances the non-payment of the money was therefore clearly not due to the inaction of the Court but to the default of the petitioner.

16. We do not think that that case has any analogy here. The learned Judge, while affirming the principle enunciated above, declined to invoke the maxim for the reason that the default was not the result of any act or inaction of the Court but of the laches of the party himself. We will presently refer to Rule 159 Civil Rules of Practice which enables a party to tender the money to a Court under certain circumstances, and which rule could be availed of by the party in M.

 

Krishnaji Reddiar Vs. Muthuveera Reddiar and Another, ) and, therefore, that decision is inapplicable to a case like this.

17. The view of the Rangoon High Court as expressed in Mon Mohan v. Raj Kumar, AIR 1933 Rang 104 is in consonance with the above doctrine. That case bore on Order XXI Rules 86, 89, 90 and 91.

18. We will lastly refer to M. Suryanarayana Rao Vs. Bommana Chinna Konda Reddy, rendered by a Bench of this Court. That case also arose under Order XXI Rules 85 and 86. The decree-holder purchaser applied for a challan to deposit the amount required for the purchase of stamp but the actual deposit was made after the prescribed time as the challan was not issued in time. The learned Judges decided that as the delay was due to the Court taking time to issue the requisite challan the mandatory provisions of the statute should be deemed to have been complied with. That is exactly the situation here and that rule governs the instant case.

19. Sri Venkatesam assails that ruling on the ground that the learned Judges had not considered the applicability of Rule 159 Civil Rules of Practice. We do not think that the non-consideration of that rule makes any material difference for the determination of the question. Rule 159, Civil Rules of Practice is in these words:-

If, the bank or treasury is closed, the money may, with the leave of the Judge, be paid to the officer of the Court; in such cases the lodgment schedule shall be endorsed with a receipt to be signed by the Judge, and the amount shall on the next day on which the bank or treasury is open be sent, together with an order and counter-foil receipt by the officer of the Court to the bank or treasury officer, who shall return the said receipt to the Court.

In the case of deposits by purchasers in Court auctions, when the deposit is made when the Bank or the treasury is closed, the payment should be made to the Officer conducting the sale. The payment shall be entered forthwith in the cash book and the ledger, and in the case of Courts dealing with the branches of the State Bank of India, in Civil Register No. 30 also, and the money left for safe custody with the head clerk until the next day on which the bank or treasury is open. The lodgment schedule shall be endorsed with a receipt to be signed by the Judge and shall also be signed by the head clerk in token of his having received the money. A lodgment order shall also be issued on the same day.

On the next day on which the bank or treasury is open, the officer of the Court to whom the money was originally paid shall receive it back, from the head clerk and shall in token of having done so, sign the lodgment schedule, and he shall with all convenient speed send the money together with an order and counter-foil receipt to the bank or treasury officer who shall return the said receipt to the Court. On receipt of the counter-foil receipt from the treasury or bank, an entry shall forthwith be made on the disbursement side of the cash book in the column under the heading ''cash'' and another on the receipt side of the book in the column under the heading "Bank or treasury''. No separate entry shall be made in the ledger in respect of the remittances into Bank or Treasury but the number of the Bank or Treasury receipt shall be entered in it in the form of an inset entry against the original entry.

The same procedure shall apply as far as may be, to amounts collected by Amins and peons on warrants of attachment or warrants of arrest when the money is brought into Court when the bank or treasury is closed.''''

20. It is manifest that that rule comes into operation only when the Bank or Treasury is closed. A party is not entitled to resort to Rule 159 when the Bank or the treasury is working. Obviously, this rule was not called in aid by the judgment-debtor in that case as it could not be established that the Bank or the treasury was closed at the relevant time. With respect we think that ILR 1958 AP 375 : M. Suryanarayana Rao Vs. Bommana Chinna Konda Reddy, was correctly decided and does not require any reconsideration as suggested by Sri Venkatesam.

21. We are not inclined to agree with the contention of the learned counsel for the appellant that the default should be attributed to the negligence of the party and was not occasioned by the inaction of the Court since it was open to the party to have applied much earlier for a challan or could have insisted on its being given to him so as to enable him to make the deposit in time. It is no argument to say that had he been diligent in applying for a challan long before, he would have obtained one and would have been in a position to comply with the requirements of that rule. A party expects a Court to be diligent in the despatch of its business and not to be inactive. If really a party is disabled to perform the obligations owing to an act of the Court, he should not be made to suffer the penal consequences flowing from the non-performance thereof.

22. In this connection, the observations of Lord Penzance in Kendall v. Hamilton, (1879) 4 AC 504 (525) are appropriate viz., that "procedure is but the machinery of the law, after all the channel and the means whereby the law is administered and justice reached: It strangely departs from its proper office when, in place of facilitating, it is permitted obstruct, and even extinguish, legal rights, and is thus made to govern where it ought to subserve". This passage is quite apt in the consideration of the question that presents itself here. To borrow the words of Mookerjee, J., in 13 Cal LJ 467 it would be a lamentable failure of justice if we were to hold that the Court is not competent to do substantial justice in a case of this kind.

23. It is not suggested here that the 2nd respondent was in any way responsible for the non-issue of the challan in time or that the Bank was closed on the 18th, 19th and 20th consequent upon which he should make a tender to the Court as contemplated by Rule 159 Civil Rules of Practice. He did all that could be expected of him in law.

24. For the above reasons, we hold that filing an application for challan before

 

the prescribed time was sufficient compliance with the mandatory provisions of Order XXI Rule 85 C. P. C. and hence Order XXI Rule 86 is not attracted.

25. In the result, the decision of the Courts below is affirmed and the appeal dismissed. There will be no order as to costs.

 