

(1982) 03 OHC CK 0001
In the Orissa High Court
Case No : A.H.O. No. 67 of 1976

Banshidhar Mohanty

APPELLANT

Vs

Gourgopal Das and Others

RESPONDENT

Date of Decision : 03-03-1982

Acts Referred:

Orissa Money Lenders Act, 1939 — Section 15(2), 15(2)

Citation : AIR 1982 Ori 140 : (1982) 53 CLT 564

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : M. Patra and B. Dagara, for the Appellant; N. Mukherjee, S.S. Das and B.P. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Behera, J.—The decree-holder in Execution Case No. 97 of 1968 of the court of the First Additional Subordinate Judge, Cuttack, who figured as the respondent No. 1 in Miscellaneous Appeal No. 214 of 1974 of this Court decided by the learned single Judge Honourable R. N. Misra, J. (as his Lordship then was), is an appeal against the reversing judgment of the learned Judge allowing the appeal preferred by the respondent No. 1 herein against the order dated Aug. 26, 1974, passed by the First Additional Subordinate Judge, Cuttack, in the aforesaid Execution Case directing sale of lots A and C properties for satisfaction of the decree under execution.

2. The appellant obtained a mortgage decree for Rs. 41,211.31 paise which, by the time of execution, amounted to over Rs. 49,000- The security for the mortgage was a house located in the city of Cuttack. Steps were taken u/s 14 of the Orissa Money Lenders Act (hereinafter referred to as the "Act") to estimate the value of the property which was done by an Engineer-Commissioner who divided the house into three parts and valued as under:

Part A-- Rs. 32,900/-

Part B-- Rs. 79,000/-

Part C-- Rs. 15,500/-

3. On March 15, 1973, the valuation was accepted by the executing court and a direction was given for the sale of Part B property which, according to the court, would be sufficient to satisfy the decree. This order could be but had not been appealed against u/s 14 (2) of the Act. Sale was held on 5-11-1973 and the appellant was the highest bidder of Rs. 18,200. On January 25, 1974, the appellant applied for revaluation of the security on the ground that the valuation made was too high and this was objected to by the respondent No. 1. The prayer for revaluation was rejected by the excuting court on April 12, 1974. On August 26, 1974, the executing court, overruling the objection raised by the respondent No. 1 to the memorandum filed by the appellant on April 18, 1974 to proceed against Parts A and C properties, allowed the prayer by holding that there was no legal bar for the appellant to proceed against the other two Parts of the properties. This order was challenged in Miscellaneous Appeal No. 214 of 1974. The appellant raised a preliminary objection in the Appeal to the effect that no appeal lay and for the reasons recorded in paragraph 2 of the impugned judgment, this objection was overruled and it was held that an appeal did lie against the impugned order of the executing court under Sub-section (2) of Section 15 of the Act. In this appeal, neither in the memorandum of appeal nor at the stage of hearing, such a contention raised before the learned single Judge has been raised before us.

4. The learned single Judge examined the question raised in the appeal as to whether the executing court had jurisdiction to direct the sale of Parts A and C properties and found as follows:--

"3. According to the judgment-debtor, Sub-section (1) of Section 15 required that the Part-B property should not be sold at a price lower than Rs. 79,000/-. The second proviso to Section 15 of the Act runs thus:--

"Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree-holder consents in writing to forgo so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation."

The Act is a piece of beneficial legislation containing a clearly indicated legislative policy of affording protection to the debtors. In order to protect debtors, it has been statutorily provided that the judgment-debtor's property should first be valued by the court and once valuation is settled instead of selling away the entire property, such part of the property which is considered adequate to bring in satisfaction of the decree is required to be sold Again, there is a statutory mandate that property should not be sold at a lesser price than indicated in the proclamation. Liberty has been given to the decree-holder to have the property

sold at a lesser value provided the decree-holder consented in writing to forgo so much of the amount decreed as was equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation. All these provisions read together certainly support the contention raised by the judgment-debtor that it is not open to the decree-holder to obtain a variation of the type as directed by the executing court in this case.

(4) I would accordingly hold that as the valuation fixed for the Part-B property was much more than the decretal dues under execution and the said property could not have been sold for a price lesser than what was indicated in the sale proclamation, it was not open to the decree-holder to drop the execution proceeding against item B and seek to proceed against the remaining two items, namely Parts A and C. The executing court went wrong in accepting the decree-holder's prayer."

5. Section 15 of the Act reads:--

"(1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor, the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation.

(2) Any person aggrieved by an order passed under Sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie :

Provided that if the property to be sold is Immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much or such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree-holder consents in writing to forgo so much of the amount decreed as equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation."

6. The learned counsel for the appellant has urged before us that to allow the Impugned order to stand by setting at naught the order passed by the executing court to proceed against Parts-A and C properties would amount to a denial of the rights which have accrued to the appellant by virtue of the decree affirmed by the Supreme Court. We are, however, not impressed with this submission. As rightly submitted on behalf of the respondent No. 1, the areas of operation of the laws conferring the rights on the appellant to have a decree passed in his favour and the laws relating to the execution proceedings which, it has not been

disputed before us are to be controlled by the Act and the provisions made therein, are distinct and different and if, for the legal limitations provided in the Act, a decree-holder is denied to have full fruits of his decree the position cannot be helped. The special law, as rightly observed by the learned single Judge, is a piece of beneficial legislation containing clearly the legislative policy of affording protection to the debtors. The learned counsel for the appellant has submitted, on the principles laid down in the case of *Carew and Company Ltd. Vs. Union of India (UOI)*, , that when two interpretations are feasible, that which advances the remedy and suppresses the evil as the legislature envisaged must find favour with the Court. Hon^{ble} Krishna Iyer, J. observed (at p. 2269):--

"The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate, notwithstanding the traditional view that grammatical construction is the golden rule."

Justice Frankfurter used words of practical wisdom when he observed (*Massachussets S. & Insurance Co. v. U. S. (1956) 352 US 128 at p. 138*).

"There is no surer way to misread a document than to read it literally."

Our attention has also been invited to the following observations made in the case of *Dilip Kumar Sharma and Others Vs. State of Madhya Pradesh*, (at p. 138):

"If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute."

Certainty of the law is the safety of the citizen, as observed in the case of *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, . Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the Context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assumes relevance and becomes material. (See *Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli*,).

7. We have kept in mind the aforesaid observations of the Supreme Court while construing the provisions of the Act and in particular, Section 15 thereof. But we cannot be oblivious of the purpose and intent of the Legislature in enacting the law. We are at one with the learned single Judge that it is a beneficial legislation affording protection to the debtors and we may add, to foster social justice.

8. The learned counsel for the appellant has submitted that it was open to the decree-holder to proceed against Parts A and C properties, as directed by the learned First Additional Subordinate Judge, Cuttack. As held by the learned single Judge, the appellant chose not to prefer an appeal u/s 14 (2) of the Act against the order passed by the executing court directing the sale of Part B property and therefore, that order became final and consequently sale was held on 5-11-1973 in which the highest bid was of Rs. 18,200/- by the appellant himself. The executing Court exercised its power under Sub-section (1) of Section 15 of the Act while directing that Part B property was to be put to sale. Later, however, the executing court, accepting the memorandum of the appellant, directed the sale of Parts A and C properties which undoubtedly would amount to a variation of the previous order under Sub-section (1) of Section 15 of the Act which had become final in the absence of any appeal by the appellant under Sub-section (2) of Section 15 of the Act. Being an Act to regulate money-lending transactions and to grant relief to the debtors, the provisions made therein should be construed keeping in mind the legislative intent. Once valuation is settled, there is a statutory mandate that the property should not be sold at a lesser price than indicated in the proclamation. Liberty has been given to the decree-holder to have the property sold at a lesser value provided he consents in writing to forgo so much of the amount of the decree as was equal to the difference between the highest bid and the price specified for such property in the sale proclamation.

As has rightly been concluded by the learned single Judge, the provisions of Section 15 of the Act read as a whole would support the contention raised by the respondent No. 1 that it would not be open to the appellant to obtain a variation of; the type directed by the executing court. It was, therefore, not open to the decree-holder to drop the execution proceeding against Part-B property and seek to proceed against Parts A and C properties. The executing court was legally wrong in accepting the appellant's memorandum and directing sale of Parts A and C properties.

9. We find no justifiable ground for any interference in this appeal against the judgment passed by the learned single Judge.

10. We would accordingly dismiss the appeal and maintain the judgment of the learned single Judge leaving the parties to bear their own costs of this appeal.

Patnaik, J.

11. I agree.