
(2001) 07 AP CK 0133
In the Andhra Pradesh High Court
Case No : C.R.P. No. 632 of 1999

Biruduvolu Haranadha Reddy

APPELLANT

Vs

State Bank of India, (ADB) and Another

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 92(2)
Limitation Act, 1963 — Article 127

Citation : (2001) 5 ALT 455

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : B. Srinarayana, for M. Ravindranath Reddy, for the Appellant;
Ravisekhar, for K. Gopala Krishna Murthy and P. Madhusudhan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Civil revision petition is filed by the revision petitioner-second judgment debtor against an order made in E.A.No. 372 of 1998 in E.P.No. 34 of 1992 in O.S.No. 1 of 1989 on the file of the Senior Civil Judge, Kovur dated 2-2-1999.

2. The facts of the case in brief are that the first respondent in the revision, the decree holder filed a suit O.S.No. 1 of 1989 on the file of the Senior Civil Judge, Kovur against the father of the revision petitioner for realization of the loan amount and the suit was decreed. The present petitioner was brought on record as the legal representative of the defendant in the suit. The respondent No. 1 to execute the said money decree, had filed E.P.No. 34 of 1992 and brought the properties of the revision petitioner to sale and item No. 4 was auctioned and the second respondent became the successful bidder and auction purchaser. The revision petitioner filed E.A. 372 of 1998 under Order 21 Rule 89 C.P.C. for setting aside the sale. The said execution application was dismissed by the

learned Senior Civil Judge, Kovur by order dated 2-2-1999 and aggrieved by the same the present revision petition is filed.

3. Sri B. Srinarayana, representing Sri Ravindranath Reddy, made the following submissions: Sri B. Srinarayana had contended that the object of conducting the sale is only for realization of the amount and the first respondent decree holder being a Bank, since at present the revision petitioner second judgment debtor is willing to pay the amount, in equity sale may be set aside on receiving the amount. The learned Counsel also had contended that the value fetched is very low and because of the sale conducted much prejudice is caused to the revision petitioner.

4. Sir Ravisekhar representing Mr. Gopalakrishnamurthy first respondent decree holder had submitted that under Order 21 Rule 89 C.P.C. making deposit of the amount is a pre-condition and in view of the ratio laid down in P.K. Unni Vs. Nirmala Industries and others [OVERRULED], the application itself is incompetent and the court below is perfectly justified in dismissing the said application.

5. Sri Madusdhana Reddy, learned Counsel representing the second respondent/ auction purchaser had submitted that though the application can be filed within sixty days, the sale warrant amount has to be deposited only within thirty days. The learned Counsel had drawn my attention to Order 21 Rule 92 (2) C.P.C. in this regard. The learned Counsel also had relied upon a decision reported in Devineni Durgamba Vs. Raj Kumar Financiers, Vijayawada, to substantiate his stand. It is also brought to my notice that the sale was confirmed and possession also was taken and in case at this stage if the revision petitioner is permitted to deposit the amount much prejudice will be caused to the auction purchaser.

6. After hearing all the parties and after perusing the material available on record. I am of the view that the impugned order does not suffer from any illegality or jurisdictional error. Order 21 Rule 89 C.P.C. reads as follows:

"Application to set aside sale on deposit:

(1) Where immovable property has been sold in execution of a decree any person claiming interest in the property sold at the time of the sale or at the time of making the application or acting for or in the interest of such person, may apply to have the sale set aside on his depositing in Court,

(a) for payment to the purchaser, a sum equal to five per cent of the purchase money, and

(b) for payment to the decree holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree holder.

(2) Where a person applies under Rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or

prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment debtor from any liability he may be under in respect of costs and interest not covered by proclamation of sale."

Making of deposit is a condition precedent for maintaining an application under Order 21 Rule 89 C.P.C. The Apex Court in P.K. Unni's case (1 cited supra) was pleased to observe that for an application for setting aside the sale of the immovable property sold in execution, deposit has to be made within 30 days from the date of the sale under Order 21 Rule 92(2) C.P.C. and not within 60 days as per Article 127 of the Limitation Act, 1963. It may be appropriate to refer to Article 127 of the Limitation Act, 1963 in this regard which reads as follows:

-----	Description of
suits	Period of limitation Time from which period begins to run.
-----	sixty days the
date of sale.	127. To set aside Sale in execution of a decree including any such
application	by Judgment-debtor.

A similar question in a slightly different context fell for consideration in Devineni Durgamba's case (2 cited supra) and this Court had reiterated the principle that deposit should be made within a period of 30 days.

7. Coming to the facts of the case, it is not in dispute that the revision petitioner just had made an application under Order 21 Rule 89 C.P.C. without making any deposit and hence the very application itself is incompetent and the Court below is well justified in passing the impugned order.

8. Hence for the foregoing reasons, civil revision petition is devoid of merits and it is accordingly dismissed. No costs.