(1956) 02 KAR CK 0001

In the Karnataka High Court

Case No : Regular Appeal No. 72 of 1955

Canara Industrial and Banking Syndicate Ltd. APPELLANT

Vs

A.M. Siddabasaviah and Sons RESPONDENT

Date of Decision : 13-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 43 Rule 1, 294

Citation : (1956) 02 KAR CK 0001

Hon'ble Judges : Venkataramaiya, C.J;Padmanabhiah, J

Bench : Division Bench

Advocate : K.V. Subba Rao, for the Appellant; D. Veerasetty, for the Respondent

Judgement

Venkataramaiya, C.J.—The Appellant is the decree-holder whose main grievance is that the lower Court has arbitrarily rejected Ills replication for permIsHloi1 to bid and purchase the properties of the judgment debtor for a sum of Rs. 16.000/-. The decree amount for which he is allowed to buy the same is alleged to be very high. The decree was passed by consent on 17-12-1949 and this appears to have been made final in 1952.

No payment is made or attempted to be mast by the judgment-debtor and sale of the properties has proved infructuous more than once. The last order in the execution case pass? on 27-6-1955 was

Degree-holder by Sri K.P. Immovable properties not sold for want of bidders. Decree-holder was permitted to bid. Sale coming on Filthy line. Decree-holder absent (which is contrary to the nine made at first). This petition is closed.

2. It is contended for the decree-holder that tem basted of way bid and any one ''joming award to buy the properties on Ave occasions, offer made by decree-holder should be treated the jest and that this was bona fide. Henchmen of the properties before judgment was applied for by the Plaintiff, the estimated value of the properties was mentioned as Rs. 12,000/-and the value is repeated in the schedule to the decree passed by consent.

Thus amount claimed in the execution petition list its. 36,280/- and odd and there is no particular reason apparently for compelling the decree-holder to purchase the properties for treble the amount at which ho valued them as the judgment-debtor wants him to do, when none else is prepared to offer any price. The judgment-debtor beyond averting that the properties are very valuable his not placed any material to support it or made any effort to raise money or secure buyers on any term:

In the sale proclamation the estimated value is stated to be less than the decree amount and this not objected to It looks as if the persons disposed to buy the properties are kept out we avert the possibility of a sale for less than the decree amount with a view to force the properties on the decree-holder in full discharge of the decree. The lower Court has overlooked this and the futility of holding further sales without allowing the decree-holder to offer the bid proposed by him.

3. Mr. Veera Setty raised a preliminary objection to the appeal as not being competent on the ground that the order fixing terms on which the decree-holder may purchase the properties is not appealable. He cited, - Ulaganatha Mudaliar and Others Vs. Molaveedu Alagappa Mudaliar, , m which the Couri relying on the observations of the Privy Council in - ''Ko Tha Hnyin v. Ma HnitV 38 Cal 717 (PC) (B), observed: "An order giving or refusing leave to bid is only ministerial order and not appealable.

The observation of the Privy Council is based on the view expressed by it in - ''Jodconath Mundel v. Brojo Mohun Ghose'' 13 Cal 174 (C), to the effect that no appeal lies from an order passed u/s 294, CPC refusing permission to a decree-holder to bid at a sale in execution of his decree. In that case the learned. Judges construed the terms of Section 588, Clause (16) of the old Code corresponding to Order 43, Rule 1, clause (j) As providing for an appeal against an odd confirming or setting aside a sale of Immovable property and not against an order refusing to give a decree-holder permission to bid.

As a safeguard against possibility of relief being denied to him on this ground Mr. Subba Rao learned Counsel for the Appellant has filed application for converting the appeal into a petition for revision.

4. The appeal cannot be dismissed as it is not merely the propriety of the order on the application of the; decree-holder for permission to bid which requires consideration but also the disposed of the execution petition.

The lower Court has acted in a mechanical rainier while treating tills application as closed sand arbitrarily in prescribing the decree ''amount laws the price; for which the decree-holder may, if at all, buy the properties. Judgment-debtor''s I counsel has not suggested any alternative to the grant of the application by adopting which any amount can be expected to be realized without disadvantage to either party.

Dealing with the application of the decree-holder in a routine manner without taking into account the result of the previous sales has lad to the needless prolongation of the proceedings. The question to be considered now is whether the termination of the execution case is justified and if this is brought about by the unreasonable rejection of the decree-holder''s request the error has to be set right in the appeal from the dismissal of the execution application. Otherwise, there la no likelihood of a finality to the case.

The processes provided for by law, to secure satisfaction of the decree will become ineffective if proceedings are allowed to drift and the Court does not apply its mind to regulate these by appropriate orders so that the procedure prescribed is not turned into a weapon for thwarting or frustrating realization of what is due.

If there was any reason to doubt the bona fides of the request the Court should have called for further information and then determined the amount for which he should be allowed to buy. A situation similar to that in this case arose for consideration in - Motilal Parsharam Vs. Fulchand Balaram, . It appears that at the first sale a property did not fetch a bid of more than Rs. 5,000/- it was. Valued by the Panch at Rs. 40,000/- and by the judgment-debtor at Rs. 60,000/-.

The decree-holder was permitted to bid not for Rs. 20,000/- ''as prayed for by him but for Rs. 40,000/-, the value fixed by the Panch. The decree-holder declined to raise his bid at the sale subsequently held and the executing Court closed the darkhast. The High Court set aside the order and Fawcett, J. observed :

Prima facie the offer of the judgment-creditor to bid up to Rs. 20,000/- seems to be a bona fide one and I do not think there was any good ground for refusing to allow him to bid unless he was prepared to go up to Rs. 40,000/-. Shah, Acting C.J, remarked:

There is apparently no reason on the record why the decree-holder should not'' have been granted leave to bid under Rule 72 of Order 21. We set aside the order disposing of the Darkhast.

In - Raghunath Rai Mahadeva Vs. Jatan Ram Sheo Narain, , the statement in - Badri Sahu and Others Vs. Pandit Peare Lal Misra and Others, , that "There is no provision of law compelling the decree-holder to bid up to any sum that may be fixed by the Court", is quoted with approval.

5. On a consideration of all the circumstances of the case I set aside the order of the Court closing the application, direct that the properties should be put up for sale after issuing a fresh proclamation setting forth particulars, if any, which the judgment-debtor wants to be included and that the lower Court dispose of afresh the application filed by the decree-holder for permission to bid in the light of the above observations. Parties will bear their own costs in this Court.

Padmanabhiah, J.

6. I agree.

