(1999) 09 AP CK 0038

In the Andhra Pradesh High Court

Case No : CRP No''s. 791 and 792 of 1993

Chivukula Ranjith kumar and others — APPELLANT

Vs

Santhilal Nemichand and another — RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 93, 151, 47

Citation : AIR 2000 AP 113 : (1999) 6 ALT 481 : (2000) 1 CivCC 191

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. M.S.R. Subrahmanyam, Mr. R.V. Prasad, for the Appellant; Mr. T. Seshagiri Rao and Mrs. A.Padma, for the Respondent

Judgement

1. Important issues that arise for consideration in these revisions are (a) The scope and purport of Section 47 of CPC (b) in cases of bank deposits consequent on the realisation of amount in Court auction; whether the decree holder is entitled for the proportionate bank interest accrued on such deposit or the amount calculated in accordance with the decree.

2. The CRP No.792 of 1993 is directed against the orders passed by the learned I Additional District Munsif, Ongole, in EA No.1020 of 1992 in EP No.425 of 1980 in OS No.135 of 1975, dated 16-2-1993.

3. The petitioners herein are the LRs. of judgment debtor No.3 in the Execution Petition. They filed an application in EA No.1020 of 1992 for releasing a cheque in favour of the 4th petitioner for a sum of Rs. 1,44,135-30 ps. Certain relevant facts leading to the filing of the revision petition arc set out herein.

4. Suit in OS No.135 of 1975 was filed by the plaintiff for recovery of certain sums. In the said suit, the 3rd judgment debtor was one Mr. Bharathasastry. The suit was decreed against all the defendants. But, however, in this case we are concerned with the judgment debtor No.3 (hereinafter called ''JD 3), whose

properties were brought to sale in execution of the decree. After the decree was passed, EP was filed by the decree holder in EP No.425 of 1980. Auction of the property of the JD 3 was held and it fetched a sum of Rs.80,000/-, while the decretal amount was Rs.60,704-20 ps. Auction purchaser was one Mr. Marella Venkata Subbaiah. He deposited the entire amount and the possession of the property was also delivered to him. The lower Court had deposited the auction amount in Bank deposits so that the amount could fetch interest. One of the sons of JD 3 one Mr. Ranjit Kumar filed OS No.218 of 1981 on the file of the Subordinate Judge, Ongole and obtained an injunction not to sell the properties covered in EP No.425 of 1980 as he had undivided interest in the said property. Ultimately, the suit was dismissed on 20-3-1986. Thereafter, the JD 3 filed EA No.1113 of 1987 under Order XXI, Rule 90 CPC for selling aside the sale. The son of JD 3 Mr. Ranjit Kumar also filed another EA No.567 of 1987 for setting aside the sale. EA No.566 of 1987 filed by the son of JD 3 was dismissed on 10-10-1987 for default. EANo.1113 of 1987 filed by the JD 3 was also dismissed, against which the matter was carried by the judgment debtor in revision before this Court and the revision was allowed. The matter was remanded for fresh consideration. However, the said application was dismissed for default by the lower Court and no steps were taken for selling aside the default order. But, however, during the pendency of the litigation, the JD 3 died and his LRs. were brought on record and they filed an application EA No. 1020 of 1992 for issuing the cheque in their favour on the ground that in the sale, the property fetched excess, amount than the decretal amount and that during the course of litigation, the amount was deposited in the bank which fetched higher interest and therefore after setting apart the decreetal amount, the balance amount should be released to them. The matter was contested by the decree holder. The learned Judge after considering the matter passed an order holding that the JDr. and decree holder are entitled for proportionate interest and that the JDr. alone cannot have the benefit of interest. Accordingly, directed that the proportionate interest accrued on the fixed deposit for the sale warrant shall be paid to the decree holder and the petitioners are entitled for the balance amount of Rs.16,850-80 ps., together with proportionate interest accrued thereon. Accordingly, it was held that the decree holder is entitled for a sum of Rs. 1,29,299-34 ps., and the petitioners are entitled for a sum of Rs.38,667-92 ps. It appears that there was another attachment for a sum of Rs.4,738-10 ps. from the Court of the Principal District Munsif, Ongole, in execution of the decree in OS No.78 of 1976. Therefore, the petitioner was directed to file fresh petition for the amount payable after keeping the attachment amount of Rs.4,738-10 ps. Aggrieved by the said order dated 16-2-1993, the present revision petition has been filed by the petitioners LRs. of the JD3.

5. The learned Counsel for the petitioner submits that the orders of the Court below is illegal and contrary to law. He submits that in money decree, the decree holder is entitled for the decretal amount in accordance with the terms of the decree and he cannot get the more amount than the decretal amount and any

amount accrued towards the interest will only go to the JDr. and not the decree holder and thus he submits that the order of the Court below in granting proportionate interest is illegal and contrary to law. On the other hand, the learned Counsel appearing for the decree holder submits that the decretal amount would have been in the hands of the decree holder had the JDr. and his son Mr. Ranjithkumar not filed suit and also the applications to set aside the sale. The decree holder could have usefully utilised this amount if was paid immediately after deposit by the auction purchaser. Therefore, he submits that under the Equity, the decree holder is entitled for this amount and not the JDr.

6. I have heard the learned Counsel for the parties and also requested Mr. R.V. Prasad, Advocate, to assist this Court on the issue.

7. I have given anxious consideration to the matter. There is no dispute that suit was decreed against all the defendants. But, however, E.P. was sought to be executed by auctioning the properties of JD 3. The sale took place on 9-11-1991 and thereafter it was confirmed on 24-2-1992. One of the sons of JD3 filed suit in OS No.218 of 1981 and the same was dismissed. Thereafter, 4th petitioner (son of JD 3) herein filed EA No.566 of 1987 seeking to set aside the sale. That was also dismissed. Apart from this, JD 3 also filed EA No. 1012 of 1992 under Order XXI, Rule 90 and the same was dismissed. Appeal filed by him was also dismissed. However, revision was preferred by JDr. and the same was allowed and the matter was remitted back to the lower Court for passing fresh orders. The said application was not processed after remand by the J Dr. and it was dismissed for default and no further steps were taken to set aside the dismissal order. In the auction held, the property fetched a sum of Rs.80,000/- and the sale warrant amount was Rs.60,794-50 ps. During the pendency of the litigation, the learned Judge deposited the amounts in the bank deposits instead of civil deposits on the ground that the amount would fetch interest during the litigation period, so that benefit would go to the parties concerned. Ultimately, by that time, the sale set aside petition was dismissed, the amount swelled considerably. Therefore, seeking the situation, the application was filed on behalf of the J Dr. to issue cheque for the amount available after satisfying the decree in OS No.135 of 1975.

8. The question that calls for consideration as to whether the interest accrued during the litigation period, should go proportionately to the decree holder and the J Dr. or whether the entire amount after satisfying the decretal amount should go to the J Drs.

9. There is no doubt that because the amount was kept in the bank deposits, it fetched the interest. If the amount had been kept in Court deposits, no interest would have accrued thereon.

10. It is the case of the learned Counsel for the decree holder that on account of the matter being dragged on by the J Dr. and his LRs. from time to time, be could not withdraw the amount deposited by the auction purchaser. Had be

withdrawn the amount, it could have earned the bank interest and therefore in all fairness and in equity, he being decree holder he is entitled for the interest which accrued on the warrant amount.

11. The JDr. however, contends that what all the decree holder is entitled is the amount which he is entitled to recover from the JDrs. in pursuance of the decree and be cannot get higher amount than the decreetal amount.

12. The moot question that calls for determination is as to how the amount has to be apportioned between the JDr. and the decree holder in the event of collection of higher amount than the decreetal amount in the Court auction and if the amount is invested in the bank pending the litigation, how the apportionment has to be ordered.

13. For proper appreciation of the case, it is necessary to consider the jurisdiction of the execution Court as to what are the issues that could be decided by it under the Code of Civil Procedure. Section 47 of CPC is the relevant provision, which is extracted below:

"Section 47. Questions to be determined by the Court executing decree :--(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or a satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) Omitted

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I:--For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II:--(a) For the purpose of this section, a purchaser for property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

14. The procedure laid down for the execution of the decrees is elaborately dealt with in Order XXI CPC various safeguards were fixed to ensure that if any issue arises during the execution, the same can be dealt with in EP proceedings instead of driving the parties to file separate suits for appropriate reliefs. As can be seen from Section 47 of the CPC all the questions arising between the parties to the suit in which the decree was passed relating to the execution, discharge or

a satisfaction of the decree are required to be considered by the executing Court. Therefore, the requirement of Section 47 is that the question should arise between the parties to the suit and that question should relate to the execution, discharge or satisfaction of the decree subject to the explanation. Therefore, when once the decree is executed or decretal amount is discharged or the satisfaction is recorded by the Court, no further questions would arise for determination of the Court. That is the reason why deeming clauses were introduced. In Explanation II, the purchaser of the property at a sale in execution of the decree was also deemed to be a party to the suit and all questions relating to the delivery of possession of such property was deemed to be a question relating to execution, discharge or satisfaction of the decree. Since the purchaser is not a party to the suit and the issue relating to the delivery of the property could not be embraced within the parameters of Section 47, explanation was added to that limited extent. Therefore, any questions except those covered by Section 47 and Explanation II would not fall for adjudication by executing Court.

15. It is now well settled that a Court executing a decree cannot go beyond the decree and it must take the decree as it stands for the decrees binding and conclusive between the parties to the suit (See: Topanmal Chhotamal Vs. Kundomal Gangaram and Others, .

16. When once the auction amount which is in excess of decretal amount is deposited in the Court and the auction purchaser has been put in possession and the auction purchaser has no dispute whatsoever with regard to the property, then it has to be construed that no question between the parties relating to the execution, discharge or satisfaction of the decree would arise.

17. It need be emphasised when once the amount fetched in the auction is below the warrant amount, it is open for the decree holder to proceed further against the judgment debtor for recovery of the balance amount. But, when once the amount exceeds the decretal amount, no further proceedings are required to be taken by the executing Court. Therefore, Section 47 does not come into play in such an event. Of course, it may be open for the parties to challenge the safe or confirmation of sale as the case may be as provided under Order 21. But, there is no provision under Order 21 how to deal with the situation, when once the amount fetched is more than the decreetal amount. Obviously, for the reason that it amounts to satisfaction of the decree and the decree holder is entitled to claim the amount as per the decree. Admittedly, in the instant case, one of the sons of JDr. had taken civil proceedings and ultimately the suit was dismissed. Even the applications were filed for setting aside the sale by son and also the father, were dismissed. But, the Court in order to see that the deposit amount would get some interest if it is deposited in the bank and that has swelled into considerable amount which attracted the attention of the parties. Had the amount not been deposited in the bank, this situation would not have arisen. The decree holder would have withdrawn the decretal amount in satisfaction of the decree and the balance would have been returned to the JDr. Therefore, the

aspect of distribution of interest has to be considered.

18. Now the question that falls for consideration is whether the interest accrued on the deposit should go to the judgment-debtor or the decree holder or it should go proportionately to the respective parties?

19. When once Section 47 is not attracted, the application itself is not maintainable. This aspect was not considered by the lower Court and it proceeded on the assumption that as if issue of apportionment of interest is within the jurisdiction of the Court below. But, however, the application filed by the judgment debtor cannot be thrown out for incorrect mention of statutory provision. The issue of this nature is not covered under the execution proceedings or in the orders relating to the execution. But, nonetheless, the inherent power is reserved to the Court for dealing with the situation empowering the Court to make such orders as to meet ends of justice or to prevent the abuse of process of the Court u/s 151 of CPC. This is a provision which falls in the realm of the equity in order to render justice to the parties. Wherever the CPC did not provide a remedy for the rights accrued, the residual powers vested u/s 151 can be invoked by the Court to do justice to the parties. Therefore, the Court exercises equitable jurisdiction u/s 151 CPC.

20. The learned Counsel for the petitioner relics on the judgment of the Division Bench of Bombay High Court reported in Keshavlal Manilal v. Chandulal Balabhai, AIR 1935 Bom. 200, wherein the Division bench held that "all that the decree-holder can claim was the sum found due under the decree with interest and that no more can be given him, while the profit must go to the person who made the deposit." It was a case where decree was passed for a sum of Rs.11,005-22 against the defendant and the judgment debtor filed an appeal to the appellate Court. The stay was granted by the appellate Court on depositing the entire decretal amount, and the decree holder was permitted to withdraw the same on furnishing the security. But, however, the decree holder did not withdraw the same. Therefore, the amount was invested in the Government Promissory Note on an application made by the judgment debtor. The main appeal was partly allowed and a sum of Rs.280/- was disallowed and the balance was confirmed. When the judgment debtor made an application to make the balance payment after deducting the amount due on the original decree, it was opposed by the decree holder claiming the appreciated value of the securities. The Division Bench rejected holding that the decree holder is entitled to claim the amount found under the decree and nothing more than that. The decree holder therein had relied on the judgment of the Calcutta High Court reported in Chowthmull Manganmull Vs. The Calcutta Wheat and Seeds Association, . In that case decretal debt was paid into the Court and the judgment debtor soon thereafter was adjudged as insolvent. The Official Assignee claimed deposit for the benefit of Estate. But, it was held that between the Official Assignee and the decree holder, it was the decree holder who was entitled to deposit on the principal that money paid into the Court belonged to the party who may be eventually found to

be entitled to the sum. But, in both these cases, the jurisdiction of the execution Court u/s 47 did not come up for consideration. But, however, the principle is settled by the Division Bench judgment in Keshavlal Manilal''s case (supra), that the decree holder is entitled to the amount which is due to him under the decree. In Chowthmull Manganmull''s case (cited supra), the Calcutta High Court held thus:

"Where the defendant-appellant obtained an order for stay of execution of decree passed against him on depositing the decretal amount in Court pending the appeal and subsequently the appellant was adjudicated insolvent and the Official Assignee did not choose to proceed with the appeal, which was therefore dismissed: Held, that the money deposited in Court was payable to the decree holder and not to Official Assignee."

But, in the instant case, the amount was not deposited by the judgment debtor, but in the auction brought up for the realisation of the amount, higher amount was fetched.

21. In Ramchandra Marotrao Wanjari v. Ramchandra Gujaba Shrawane, AIR 1938 Nag. 54, it was held that where mortgage decree directs the payment of interest on the decreetal amount till the realisation, the decree holder is entitled to the interest uplift the date of the confirmation of the sale and not upto the date when the sale proceeds are deposited in the Court. The Court was dealing with the application under Order XXI, Rules 89 and 90 CPC. But, this case also is not directly on the issue. Here the decree has become final and neither auction purchaser is staking a claim nor the judgment debtors are challenging the decree. As already stated, the auction purchaser was already delivered with the possession of the property and he has no claim whatsoever and in fact he did not make any claim at all in this regard.

22. In Upendra Nath Roy Chowdhury v. Bhudeb Chandra Roy Chowdhury, Vol.XXV 1914 Indian Cases 859, the issue related to the period for which the judgment debtor is liable to pay interest on mortgage decree obtained by the decree holder. The decree stated that after lapse of the date fixed for payment of the judgment debt, the decretal amount will bear the interest @ 6 per cent per annum till the date of realisation. The entire sale amount was deposited in the Court on 3-8-1909. On 13-8-1909, the judgment debtor filed an application under Order XXI, Rule 90 CPC for setting aside the sale. On 13-12-1909 i.e., four months later he withdrew the application and consequently sale was confirmed. The decree holder claimed interest upto 13th December, 1909, while the judgment debtors contended that the interest is allowable only upto the date of the sale and the lower Court granted interest upto 13-12-1909. The said finding was confirmed by the Division Bench. Therefore, the question there was as to the calculation of interest upto the date of sale or date of confirmation. It was held that the sale was confirmed after withdrawal of the application on 13th December, 1909 and therefore the decree holder was entitled for interest upto 13th December, 1909. This case is not applicable to the facts of the present case

on hand.

23. In Hindi Pracharak Prakashan and another Vs. M/s. G.K. Brothers and others, , the Supreme Court, while interpreting the provisions of Order 21, Rule 93 CPC it was held that the auction-purchaser is entitled to the amount along with the compensation of 12 per cent per annum of interest on that amount from the date of he deposit till the date of return. It was a case where the auction purchaser deposited the amount and the matter was kept pending at the instance of the judgment debtor for about 10 years on the judgment debtor the entire decretal amount. The question was whether the amount to the auction purchaser should be returned without any interest. The Supreme Court directed the judgment debtor to pay the interest on the amount deposited by the auction purchaser. This situation did not arise in the instant case, as the matter was being prolonged at the instance of the judgment debtor. But if right was vested with the judgment debtor to challenge the sale or confirmation of sale, it is open for him to exert that statutory right. Simply because, the judgment debtor has taken proceedings to assail the sale proceedings, it cannot be said that the judgment debtor was responsible for dragging the litigation. More over, the decree holder never made nay application to withdraw the amount by offering appropriate security. That itself shows that the decree holder was not interested to withdraw the amount. In such a situation, it could be hardly said he could have invested the same in Bank deposits and earned interest.

24. In P.S.L. Ramanathan Chettiar and Others Vs. O. Rm. P. Rm. Ramanathan Chettiar, , the Supreme Court, held that the fact that the judgment debtors depositing the amount in a Court to purchase peace by way of stay of execution of the decree on the terms that the decree holder can draw it out on furnishing security, does not pass title to the money to the decree holder. He can if he likes take the money out in terms of the order; but so long as he does not do so, there is nothing to prevent the judgment debtor from taking if out by furnishing other security, say, of immovable property, if the Court allows it and on his losing the appeal putting the decreetal amount incourt in terms of Order 21, Rule 1 CPC in satisfaction of the decree. Therefore, deposit of the amount pending the determination of the appeal would not amount to discharge of decree. The Supreme Court explained that the real effect of the deposit of money in Court as was done in this case was to put the money beyond the reach of the parties pending disposal of the appeal. ''Die decree holder could only take it out and on furnishing security which means that the payment was not in satisfaction of the decree and such security could be proceeded against by the judgment debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment debtor. This case also is not directly on the point in issue.

25. There is only one case which is directly touching the issue was Bombay High Court case. Even in that case Section 47 CPC was not considered. Whether such an issue could be subject matter in the execution proceedings. I have already

held that post deposit disputes (if the amounts fetched in the auction was higher than the decreetal amount) fall outside the jurisdiction of the Court u/s 47 CPC and as held by the Supreme Court, the decree holder is entitled for the decree holder''s amount under the decree and not beyond that. It is true that the judgment debtors filed application for setting aside the sale, and ultimately they were not successful. The lower Court relied on the judgment of the Supreme Court reported in Mongol Prasad v. Krishna Kumar Maheshwari, 1992 (2) APLJ SN 59 (SC), wherein the Supreme Court u/s 47 CPC directed that the judgment debtor should pay 12 per cent interest to the auction purchaser on setting aside the sale. But, here the sale was not set aside and it was confirmed. Therefore, this judgment is not applicable to the facts of the present case. Even the judgment of the Supreme Court relied on by the lower Court reported in PSLO Ramanathan Chettiar''s case (cited supra) is not applicable, inasmuch as the issue was whether the decree holder is entitled for interest till the date of deposit by the judgment debtor. The issue was whether the decree holder was entitled for the interest as per the decree till the date of deposit or otherwise. But, here such question did not arise in this case. The issue is how the interest accrued on the deposit has to be apportioned.

26. The Rules of Equity are one of the important factors to be taken into account by the Courts, for ensuring that the party does not suffer in the absence of any legal right. It is well settled that where the law is clear, no equitable relief is warranted. Thus, the equity will come into operation where the area is not covered by the statutory provisions. The Court is vested with the power to weigh the claims of the respective parties and grant equitable relief. The maxim that "equity follows the law" means that the equity treats the common law as laying the foundation of all jurisprudence and does not depart unnecessarily from the legal principles. When the equity has to regulate the equitable interest, which it has itself created, it acts, so far as possible, on the analogy of legal rules applicable to the corresponding legal interest and departs from this analogy only in exceptional cases (See: Halsbury Laws of England 4th Ed. 16th Vol. P.678). Therefore, equitable relief also cannot be granted giving a complete go bye to the settled legal principles.

27. In the instant case the suit was decreed on 31-3-1977. In execution of the decree properties of JD 3 were brought on sale. Item 4 of EP schedule property was put to public auction on 9-10-1981 and it fetched a sum of Rs.80,000/- whereas the sale warrant amount was Rs.60,712-20 ps. i.e., excess amount was realised. The sale amount was deposited by the auction purchaser and after deducting the poundage the Court directed the deposit of balance sum of Rs.77,555/- in the Bank deposits. The sale was confirmed by the Court on 24-2-1982. However, due to certain events which were already traced out in the preceding paras the matter was kept pending for considerable time. The sale set aside petition which was dismissed by the lower Court was carried to the High Court and finally the matter was remanded to the lower Court to dispose of the same afresh. However, the petition was not prosecuted by the J Drs. and it was

dismissed for default on 28-7-1992 and no steps were taken to reprocess the said petition. In the meanwhile considerable interest had accrued on the bank deposits. The lower Court held that the equity should aid the decree holder on the ground that even though the decree was passed in 1977, he could not reap the benefits on account of the matter having been kept under litigation at the instance of J.Drs. and directed payment of interest accrued on sale warrant amount to the decree holders and the interest on the balance amount to the JDrs.

28. It is a fortuitous circumstance that the amount fetched in Court auction was more than sale., warrant amount and the Court had invested the amount in bank deposits. Though the petition to set aside the sale was directed to be heard afresh by this Court, it was dismissed for non-prosecution on 28-7-1992. The JDrs. have not evinced any interest to get the order of dismissal set aside. Thus, it has to be construed that there was no such petition at all in the eye of law. Therefore, under these circumstance, the date on which the Court confirmed the sale has to be treated as a reckonable date for the purpose of working out equities. But the property was parted with by the JDrs. without any objection and it was delivered to the auction purchaser. Thus, the JDr. did not enjoy the property during the pendency of sale set aside petition. Therefore, they cannot be deprived of the benefit of interest on the amount fetched in auction. Even the decree holder did not make any effort to withdraw the amount by furnishing security during the period and it is a manifestation of his disinclination to utilise the amount. The equity aids only the vigilant and not dormant. Therefore, even when both the parties are equally to be found fault with, they are to be equally treated in case of fortunes also. The maxim "equality in equity" squarely fits in this situation. Equity is not an abstract theory and it must be applied to suit a particular situation in the absence of statutory coverage. Therefore, the finding of the lower Court that the equity stood by the side of the decree holder, who could have more profitably utilised the sale warrant amount but for the litigation lock up of the amount cannot be sustained. It may be under fortutous circumstance, the amount fetched enormous interest on account of considerable delay in litigation. But that would not enure to the benefit of the decree holder. Even if the matter is under litigation for a considerable number of years, ultimately, what the decree holder is-entitled to the amount is the amount which falls due under the decree and not beyond that.

29. Accordingly, the Order under revision is set aside. The 1st respondent (decree holder) is entitled for the sale warrant amount with proportionate interest accrued thereon from 28-7-1992, the date on which the sale set aside petition was dismissed till the date of payment and the balance amount after excluding the aforesaid amount will be paid to the petitioner (J.Drs.), but however subject to setting apart the decreetal amount in OSNo.78of 1976.

30. The CRPs. are ordered accordingly.

31. Not but the least, the valuable assistance rendered by Mr. R. V. Prasad, Advocate, appointed by this Court as amicus curias has to be properly

recognised. He made valuable submissions to enable this Court to appreciate the case and render judgment. This Court records great appreciation for the invaluable assistance rendered by Mr. R V. Prasad. No costs.

