
(2010) 03 MAD CK 0136

In the Madras High Court

Case No : Writ Petition No. 14594 of 2007 and M.P. No's. 1 and 2 of 2007

C.N. Paramasivam and E.M.C. Palaniappan

APPELLANT

Vs

Sunrise Plaza and Others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 86

Limitation Act, 1963 — Article 134

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29

Citation : (2010) 4 BC 165

Hon'ble Judges : T.S. Sivagnanam, J;C. Nagappan, J

Bench : Division Bench

Advocate : R. Murari, for the Appellant; T.V. Ramanujam for Respondents 1 to 3 and M. Vijayan, for King and Partridge for R4, for the Respondent

Final Decision : Dismissed

Judgement

C. Nagappan, J.—The petitioners have sought for issuance of a Writ of Certiorari to quash the order dated 28.2.2007 passed by the Debt Recovery Appellate Tribunal, Chennai in MA. No. 90 of 2006.

2. The facts which led to the filing of the writ petition are as follows. The first respondent is a Partnership Firm and respondents 2 and 3 are its partners. The first respondent availed loan from the fourth respondent Bank to the limit of Rs. 90 lakhs on 9.9.1991. The respondents 2 and 3 also created equitable mortgage on their properties by depositing the title deeds for the said loan. There was default in repayment and for recovery, the fourth respondent herein filed Original Application in O.A. No. 238 of 1998 on the file of Debts Recovery Tribunal at Chennai and it was re-numbered as O.A. No. 1098 of 2001.

3. Respondents 1 to 3 were set exparte on 25.2.1999 and exparte Decree also came to be passed on 20.9.1999. The respondents 1 to 3 filed Application in I.A. No. 2240 of 1999 for setting aside the exparte order and Application in I.A. No.

2606 of 1999 for setting aside the exparte Decree. The Applications were dismissed for default on 20.11.2001. The respondents 1 to 3 herein filed I.A. Nos. 897 and 898 of 2001 to restore the Interlocutory Applications in I.A. Nos. 2240 and 2606 of 1999 and they were dismissed on 1.5.2002.

4. In the meanwhile, in execution of the Recovery Certificate, the immovable property was brought to sale by public auction held on 7.3.2003 and the petitioners herein took part in the auction and purchased the property. The respondents 1 to 3 filed I.A. No. 146 of 2003 for setting aside the auction held on 7.3.2003 and I.A. No. 150 of 2003 seeking for not to confirm the sale. The Debts Recovery Tribunal passed a conditional order, dated 10.4.2003 in I.A. No. 150 of 2003 to defer the confirmation of sale on condition the respondents 1 to 3 paying a sum of Rs. 10 lakhs to the Bank or to the Recovery Officer on or before 25.4.2003. The Tribunal dismissed I.A. No. 146 of 2003 on 15.4.2003 as not maintainable. When the matter was called on 25.4.2003, the respondents 1 to 3 sought for extension of time and the Debts Recovery Tribunal rejected the request and allowed the Recovery Officer to proceed further in accordance with law. Sale Certificates were issued to the petitioners on 28.5.2003.

5. The respondents 1 to 3 herein filed appeal in IN. No. 197 of 2003 challenging the orders passed by the Debts Recovery Tribunal-II, Chennai in I.A. Nos. 897 and 898 of 2001 and the Debts Recovery Appellate Tribunal, by order dated 29.8.2003 directed the appellants therein/respondents 1 to 3 herein to pay requisite Court fee if they want to challenge the final order of Debts Recovery Tribunal. Challenging the above said order of the Appellate Tribunal, the respondents 1 to 3 herein filed Writ Petition in W.P. No. 28235 of 2003 without notice to the Court auction purchasers viz. the petitioners herein and this Court by Order dated 14.10.2003 set aside the exparte Decree passed by the Debts Recovery Tribunal subject to payment of costs of Rs. 10,000/- to the fourth respondent Bank. The order was complied with and the Original Application is still pending.

6. Challenging the Order of this Court in W.P. No. 28235 of 2003, the fourth respondent Bank has preferred SLP before the Supreme Court and it was dismissed by Order dated 8.7.2004. Thereafter, the fourth respondent Bank filed Review Application No. 13 of 2004 and the petitioners herein filed Review Application No. 19 of 2004 seeking for review of the Order dated 14.10.2003 passed in W.P. No. 28235 of 2003 and this Court dismissed the Review Applications by Order dated 5.10.2004 by observing that the auction purchasers are free to represent their case before the Debts Recovery Tribunal in the main Original Application.

7. Based on the above observation, the petitioners herein filed Application in I.A. No. 20 of 2005 on the file of Debts Recovery Tribunal-II, Chennai seeking for delivery of possession of the property purchased by them. The Debts Recovery Tribunal, by order dated 28.3.2006, allowed the Application by directing the Recovery Officer to put the petitioners in possession of the property. The

respondents 1 to 3 herein challenged the said order by preferring Appeal in M.A. No. 90 of 2006 before the Debts Recovery Appellate Tribunal, Chennai and the Appellate Tribunal by order, dated 13.7.2006, allowed the appeal and set aside the order and directed the Debts Recovery Tribunal to take up the Interlocutory Application in I.A. No. 20 of 2005 along with O.A. No. 1098 of 2001 and dispose of them in accordance with law. Challenging the said order, the petitioners herein preferred writ petition in W.P. No. 29356 of 2006 and a Division Bench of this Court, by Order dated 29.11.2006, set aside the order of the Appellate Tribunal and remitted the case to Debts Recovery Appellate Tribunal to decide the issue whether the rights of the bonafide purchasers stand curtailed or not even after the exparte Decree is set aside. On remand, the Debts Recovery Appellate Tribunal held that the petitioners herein are not bonafide purchasers of the property and set aside the sale and directed the respondents 1 to 3 to deposit the entire amount claimed in Original Application. The said impugned order is challenged in the present writ petition. 8. Mr. R. Murari, learned Counsel for the petitioners, submitted that the petitioners were not made parties to any Application filed by respondents 1 to 3 and the question of being aware of any such Application at the time when the sale was confirmed in their favour would not arise and the finding of the Debts Recovery Appellate Tribunal that the petitioners were live to the litigation between the Decree Holder and the Judgment Debtors and purchased the properties with a view to make a capital out of it and they are not bonafide purchasers and their purchase cannot be lawfully protected is totally incorrect and liable to be set aside. It is his further contention that though the petitioners were not aware of the petitions filed by the respondents 1 to 3/Judgment debtors to set aside the sale, it however transpires that the Recovery Officer had passed conditional order directing them to deposit a sum of Rs. 10 lakhs as pre-condition for the sale not being confirmed and they failed to comply with such a condition and the petitions were dismissed and the sale was confirmed and therefore the respondents 1 to 3 could not be permitted to rely upon any such application at this point of time and the petitioners who are strangers to the Court proceedings have purchased the properties in the Court auction sale and the sale has been confirmed and they are bonafide purchasers and the sale in their favour is protected and they cannot be asked to restitute the properties to the Judgment Debtors even if the Decree is set aside and as bonafide purchasers, they are entitled to possession of the properties and the order of the Appellate Tribunal is erroneous and liable to be set aside. In support of his submission, he relied on the following decisions of the Supreme Court and this Court.

1. Janak Raj Vs. Gurdial Singh and Another,
2. Gurjoginder Singh Vs. Jaswant Kaur (Smt) and Another,
3. Padanathil Rugmini Amma Vs. P.K. Abdulla,
4. Ashwin S. Mehta and Another Vs. Custodian and Others,

5. Janatha Textiles and Others Vs. Tax Recovery Officer and Another,

6. S. Chokalingam Asari v. N.S. Krishna Iyer and Ors. AIR 1964 Mad 404

9. Per contra, Mr. T.V. Ramanujam, learned Senior Counsel appearing for the respondents 1 to 3/Judgment Debtors submitted that the petitioners are not bonafide purchasers for valid consideration and the properties have been sold for a pittance while the actual value is more than Rs. 8 Crores and the petitioners were well aware of the Applications filed by the respondents 1 to 3 herein for setting aside the exparte Decree and to stay the sale and with the knowledge of pending litigation, the purchase has been made and such purchase is not legally protected and in any event the Application seeking possession has been filed beyond the statutory period of limitation viz. one year, as prescribed under Article 134 of the Limitation Act and it is hit by limitation and hence it is not maintainable. The learned Senior Counsel further contended that the auction sale proceedings became void due to operation of Rule 57 Second Schedule to Income Tax Act, 1961, when the Auction Purchasers failed to deposit 25% of the auction amount on the date of auction after declaration as successful bidders and even after default of such deposit, the property was not re-sold and further the Auction purchasers had failed to deposit the balance of purchase money within a period of fifteen days as mandated in Rule 57 as well as in the Terms and Conditions of sale and the Sale had become null and void and the Sale proceedings are completely wiped out as if they do not exist in the eye of law and the petitioners are not entitled to possession and order of the Appellate Tribunal is sustainable. In support of his submission, the learned Senior Counsel relied on the following decisions of the Apex Court and High Court.

1. Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another,

2. Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others,

3. Balram Vs. Ilam Singh and others,

4. Narayan Karwa and Others Vs. Union of India (UOI), Vijay M. Pangam, Tax Recovery Officer, outstation Charge, Amta Desai, Commissioner of Income Tax and Suresh Mehta,

10. In reply, Mr. Murari, the learned Counsel for the petitioners submitted that the respondents 1 to 3/Judgment Debtors have for the first time raised the plea that the sale had become null and void because of non-compliance of provisions of Rule 57 of Second Schedule to the Income Tax Act, 1961 in the additional counter filed by the respondents 1 to 3 on 5.11.2009 and the sale proceedings would be conducted by the Recovery Officer as per the procedure contained in Second Schedule to Income Tax Act and the Recovery Officer would follow such Rules contained in Second Schedule as far as possible with necessary modifications to the extent necessary and there is a discretion conferred on the Recovery Officer u/s 29 of the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993, to follow Rule 57 as far as possible and it makes Rule 57 as directory only and the petitioners had deposited 25% of the bid amount by Draft and Cheque on the date of sale itself and the balance of the purchase money has also been deposited and it is not open to the respondents to challenge the sale proceedings on the ground of violation in conduct of sale and valuable rights have accrued to the Auction purchasers and there is no force in the submission made by the learned Senior Counsel appearing for the respondents 1 to 3. In support of this submission, the learned Counsel for the petitioners relied on the decision of a Division Bench of Andhra Pradesh High Court in P. Mohanreddy and Others Vs. Debts Recovery Appellate Tribunal and Others, .

11. From the submissions made at the Bar, it would emerge that the sale proceedings are challenged on the ground of non-compliance of provision of Rule 57 of Second Schedule to Income Tax Act, 1961 for recovering the amount of debt due.

12. Section 29 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 makes the Second and Third Schedules to the Income Tax Act , 1961 applicable for recovery of debt due under the Act. Rules 57 and 58 of Second Schedule to the Income Tax Act, 1961 are relied upon to have the auction sale set aside for breach of the said Rules. The said Rules read as under.

57. Deposit by purchaser and resale in default: (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty five per cent on the amount of his purchase money, to the Officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of sale of the property.

58. Procedure in default of payment: In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Similar provisions are contained in Code of Civil Procedure, 1908 also. Rule 57 is identically worded as that of Rules 84 and 85 of Order 21 of CPC and Rule 58 is identically worded as that of Rule 86 of Order 21 of CPC. The principles and decisions interpreting Rules 84, 85 and 86 of Order 21 of CPC would squarely apply in case of Rules 57 and 58 of Second Schedule to Income Tax Act, 1961.

13. The Supreme Court considered Rules 84, 85 and 86 of CPC in the decision in Manilal Mohanlal Shah's Case AIR 1954 Sc 34) and laid down as follows.

8. The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is, however, mandatory (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit and there the discretion ends but the obligation of the court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property ... (Rule 86).

9. ...There was default in depositing 25 percent of the purchase money and further there was no payment of the full amount of the purchase money within fifteen days from the date of the sale. Both the deposit and the payment of the purchase money being mandatory under the combined effect of rules 84 and 85, the Court has the discretion to forfeit the deposit but it was bound to re-sell the property with the result that on default the purchaser forfeited all claim to the property. These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.

10. ...

11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no-sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.

The above decision has been followed by the Supreme Court in the subsequent decision in *Balram Vs. Ilam Singh and others*, and it was held that the duty to pay the full amount of purchase money within the prescribed period of 15 days from the date of sale is cast on the purchaser by virtue of Rule 85 of Order XXI CPC and therefore, the entire responsibility to make full compliance of the mandatory provision is his and non-compliance of the same would render the sale a nullity.

14. The Auction Sale Notice, in the present case, is found in the typed set filed by respondents 1 to 3 and the Upset Price fixed was Rs. 1,15,00,000/- (Rupees One Crore and Fifteen Lakhs only) and the Conditions mentioned therein are as follows.

1. The intending bidders should pay 10% of the upset price of the property as EMD by means of a D.D. Drawn in favour of the Recovery Officer, Chennai Debts Recovery Tribunal-II, Chennai payable at Chennai before 12 Noon on the date of auction. They can inspect the property between 11.00 A.M., and 3.00 P.M. on 8.2.2003.

2. The successful bidder should pay 25% of the bid amount (less the E.M.D) immediately on the sale being knocked down in his favour and the balance money within 15 days.

3. The successful bidder should bear the charges/fee payable for conveyance such as Registration fee, stamp duty etc as applicable as per law in addition to poundage fee.

4. The Recovery officer has the absolute right to accept or reject a bid or postpone/cancel the sale.

5. ...

The auction was held on 7.3.2003 at 3.30 pm and the petitioners bid for a sum of Rs. 1,15,50,000/- (Rupees One Crore and Fifteen Lakhs and Fifty thousand only) was accepted.

15. The petitioners claim that they have paid the deposit of 25% on the amount of purchase money on the date of sale itself. As per the order of the Recovery Officer dated 7.3.2003, a copy of which is found in the typed set filed by the respondents 1 to 3, the deposit of 25% of the purchase money is made by the petitioners in the following manner and for better appreciation, the order is reproduced below.

DRC 164/2001

Received Rs. 28,87,500/- (Rupees twenty eight lakhs eighty seven thousand five hundred only) consisting 2 DDs for 11,50,000/- and 2 cheques for Rs. 17,37,500/- towards 25% bid amount from Mr. C.N. Paramasivam, 16, TTK Road, 1st Cross Street, Alwarpet, Chennai-18 and Mr. E.M.C. Palaniappan, 46, Prakasam Street, T. Nagar, Chennai-17 for the properties auctioned on 7-3-2003 in the above DRC proceedings and the balance bid amount and 1% poundage payable by the bidders within 15 days is Rs. 87,78,000/-.

From the above, it is seen that the petitioners have paid a sum of Rs. 17,37,500/- (Rupees seventeen lakhs thirty seven thousand five hundred only) by two cheques while making the deposit of 25% of the amount of the purchase money.

16. The Supreme Court, in the decision in Rao Mahmood Ahmed Khan Vs. Sh. Ranbir Singh and others, , while interpreting Rule 285D of the U.P. Zamindari Abolition and Land Reforms Rules, which is regarded as parimateria to Rule 84 of Order XXI of CPC held that the deposit of 25 per cent of bid amount by cheque will not be a valid tender within the meaning of the Rule and the Rule does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount and there was non-compliance of the rule. For better appreciation, the relevant observation made by Their Lordships in the said decision are as follows:

11. Thus, it is settled law that the provisions of Order 21, Rule 84, 85 and 86 of the CPC are mandatory and the provisions of Rules 285D and 285E being similar in terms of the aforementioned corresponding provisions of the CPC and in view of the aforesaid discussion there is no escape from declaring the sale a nullity if Rule 285-D is not complied with.

12. ...The question is whether such a payment by cheque could be regarded as a valid deposit within the meaning of Rule 285-D. As discussed above Rule 285-D is a mandatory rule according to which if 25 per cent of the bid amount is not deposited immediately the land shall forthwith be again put up and sold. In other words on the failure of the purchaser to deposit 25 per cent of the bid amount immediately the land shall be resold immediately after such failure the very same day. If for instance the 25 per cent of the bid amount is accepted by cheque and subsequently the purchaser changes his mind and advises his banker not to encash the cheque or there is no amount in the account of the purchaser in the bank and the cheque is bounced, the purpose of Rule 285-D would be frustrated and thus the mandatory provisions would be rendered nugatory. The result would be that neither the authorities would be in a position to forfeit any amount of the purchaser nor the authority would be in a position to defray the expenses of the sale as contemplated by Rule 285-E. The other consequence that will follow is that the re-sale of land will have to be delayed and a fresh proclamation for sale has to be issued as provided by Rule 285G. It, therefore, appears to us that Rule 285-D does not contemplate any payment by cheque but a cash deposit of 25 per cent of the bid amount has to be made in accordance with the requirement of the rule, otherwise the very purpose of the mandatory Rule 285-D would be frustrated and rendered nugatory. In these facts and circumstances we are of the view that deposit of 25 per cent of the bid amount by cheque will not be a valid tender within the meaning of the rule.

17. Rule 57 of Second Schedule to Income Tax Act, 1961 is a mandatory Rule directing a deposit of 25 per cent on the amount of the purchase money immediately on being declared to be the purchasers and it does not contemplate any payment by cheque but a cash deposit of 25 per cent of the purchase money and hence part payment of deposit of 25 per cent of the purchase money by cheques will not be a valid tender within the meaning of the Rule and there was no compliance of Rule 57(1) as well as the Conditions of auction sale.

18. The second limb of the contention of the learned Senior Counsel appearing

for the respondents 1 to 3 pertaining to non-compliance of provision of Rule 57(2) is that the Auction purchasers viz. the petitioners had failed to deposit the balance purchase money within a period of fifteen days from the date of sale and hence there was no sale at all.

19. The payment of balance of purchase money within fifteen days from the date of sale is mandatory as per Rule 57 and it is also mandatory condition stipulated in the Auction Sale Notice. Moreover, the Recovery Officer in his order dated 7.3.2003, referred above, has also reiterated that the balance of bid amount and one per cent poundage fee payable by the petitioners within 15 days is Rs. 87,78,000/- (Rupees eighty seven lakhs and seventy eight thousand only). The period of fifteen days from the date of sale lapsed on 22.3.2003. Admittedly, the auction purchasers/petitioners did not pay the balance of purchase money till 22.3.2003. They did not also file any petition seeking for extension of time.

20. The petitioners in their letter dated 2.5.2003 addressed to the Recovery Officer, a copy of which is found in the typed set, have stated that after the payment of deposit of 25 per cent of the purchase money, they have paid a sum of Rs. 10 lakhs on 30.4.2003 and they are remitting on the said date, viz. 2.5.2003, a sum of Rs. 15,00,000/- (Rupees fifteen lakhs only) by Pay Order dated 2.5.2003, drawn on Indus Ind Bank; a Cheque for Rs. 2,00,000/- (Rupees two lakhs only) dated 2.5.2003, drawn on HDFC Bank and a Cheque for Rs. 1,89,000/- (Rupees one lakh and eighty nine thousand only) dated 2.5.2003, drawn on Citi Bank and they have further stated in their letter that there is a balance of purchase money to the tune of Rs. 50,00,000/- (Rupees fifty lakhs only) as on that date and a loan has been sanctioned to them by LIC Housing Finance Limited, Teynampet Branch for a sum of Rs. 50,00,000/- (Rupees fifty lakhs only) subject to condition that the Debts Recovery Tribunal would register the property individually in the names of the petitioners conveying 50% undivided share of the property in each person's favour and the balance amount of Rs. 50 lakhs would be remitted by LIC Housing Finance Limited, Teynampet Branch on their behalf and the petitioners requested for issuance of letters individually to them stating the balance and that the property would be registered individually in their names as undivided share of land. The petitioners also filed individual memo dated 6.5.2003 before Debts Recovery Tribunal-II stating that they have paid a sum of Rs. 59 lakhs approximately constituting 50% of the bid amount and the balance of 50% remains to be paid and LIC Housing Finance Limited, Teynampet Branch has sanctioned loans in their individual names for the above amount and they pray for issuance of Certificate of Sale representing 50% of undivided share in respect of the property to each of them. Pursuant to the above request of the petitioners, the Recovery Officer issued individual Certificate to each of the petitioners certifying that they are joint successful bidders of the properties in the Auction held on 7.3.2003 and balance of Rs. 25 lakhs is payable by each of the petitioners. Thereafter, on 28.5.2003, individual Sale Certificate in the names of the petitioners were issued by the Recovery Officer. From the above, it is clear that the Auction purchasers/

petitioners did not pay the balance of purchase money within fifteen days of sale viz. 22.3.2003 and no payment was made during that period and they have paid the full amount of purchase money only in the month of May, 2003. There was clear non-compliance of Rule 57 and also the Conditions of sale.

21. A Division Bench of the Bombay High Court in the decision in Narayan Karwa and Others Vs. Union of India (UOI), Vijay M. Pangam, Tax Recovery Officer, outstation Charge, Amta Desai, Commissioner of Income Tax and Suresh Mehta, considered Rule 57 of Second Schedule of Income Tax Act, 1961 and held that failure to deposit the entire purchase money on or before the fifteenth day from the date of sale not only renders the sale invalid but also renders the 25 per cent purchase price deposited on the date of auction liable to be forfeited. For better appreciation, the relevant portion of the above decision is extracted below.

However, in the present case, it is an admitted fact that respondent No. 4 has failed to deposit the entire purchase price within the time stipulated under the Act. According to the petitioners, failure to deposit the entire purchase price within the stipulated time, not only renders the sale invalid but also renders the 25 per cent deposit made on the date of auction liable to be forfeited.

It is not necessary for us to go into the question as to whether the failure on the part of the auction purchaser to deposit the entire purchase price within the stipulated time renders the 25 per cent purchase price deposited on the date of auction sale liable to be forfeited. Suffice it to say that the order of the Tax Recovery Officer in confirming the auction sale on July 11, 1991, is wholly unjustified because, in the present case, respondent No. 4 has not deposited the entire purchase price on or before the fifteenth day from the date of sale, in spite of the specific provision contained in Rule 57 of the Second Schedule to the Act and in spite of specific clause No. 24 contained in the terms and conditions of sale.

...

There is no merit in this contention, because there is neither any provision under the Act which permits the auction purchaser to deposit the entire purchase price beyond the period of fifteen days from the date of sale nor there is any provision empowering any authority to grant extension of time. Therefore, the Tax Recovery Officer could not have accepted the balance purchase price beyond the period of fifteen days from the date of sale. The argument that respondent No. 4 had the requisite money and that he was ready and willing to pay the entire purchase price within the stipulated time cannot be accepted, because, in our opinion, under Rule 57 read with the terms and conditions of sale, it was mandatory on the part of respondent No. 4 to deposit the entire purchase price on or before the fifteenth day from the date of sale. Once it is admitted that the entire purchase price has not been deposited within the stipulated time, then, it must be held that the sale had become invalid and the Tax Recovery Officer could not have confirmed the sale.

The ratio of the above decision is applicable to the facts of the present case.

22. There is no separate procedure laid down in Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovering the debt due. Section 29 of the Act makes Second and Third Schedules to Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 as in force from time to time, as far as possible applicable with necessary modifications as if the said provisions and the Rules referred to the amount of debt due under the Act instead of to the Income Tax.

23. A Division Bench of the Andhra Pradesh High Court in the decision in P. Mohanreddy and Others Vs. Debts Recovery Appellate Tribunal and Others, held that Section 29 of the Act does not enjoin upon the Recovery Officer to follow the provisions of Recovery of Tax Rules provided in Second Schedule to Income Tax Act in letter and spirit but gives him discretion to follow the same as far as possible and Section 29 of the Act makes Rule 57 as directory only and the belated payment of purchase money will not affect the legality and validity of the sale.

24. With respect, we are not in agreement with the view taken by the Division Bench of Andhra Pradesh High Court in the above decision.

25. Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 makes the Second Schedule to the Income Tax Act applicable for recovery of the debt due and the Recovery Officer is bound to follow the said rule. In the absence of any rule under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 modifying the Second Schedule to Income Tax Act, 1961, it is not open to the Recovery Officer to deviate from the said rules and make modifications of his own. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25% of the purchase money in the first instance and the balance within 15 days. The very fact that the Recovery Officer is bound to resell the property in the event of default shows that the previous proceedings for sale are completely wiped out. The only discretion conferred on the Recovery Officer is whether to forfeit the deposit of defaulting purchaser or not.

26. Keeping in view the intent and object of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, in our view, the Recovery Officer is obliged to follow the provisions of Second and Third Schedules to the Income Tax Act, 1961 with regard to recovery of debt due and in the absence of any modification, Rule 57 is mandatory only.

27. The petitioners, being auction purchasers, failed to deposit 25% of the purchase money on the date of sale and the full amount of purchase money within 15 days from the date of sale and having not complied with the mandatory provision under Rule 57 read with the conditions of sale have forfeited all claim to the properties.

28. In view of our conclusion that there was no sale and the purchasers acquired no rights at all to the properties, there is no need to go into the merits of the contentions as to whether the petitioners are bonafide purchasers and as to whether the claim of the petitioners is barred by the provisions of the Limitation Act.

29. The conclusion of the Debts Recovery Appellate Tribunal that the sale in favour of the petitioners cannot be legally protected and liable to be set aside, is sustainable albeit for the reasons stated above.

30. The Writ Petition is dismissed. However, there shall be no order as to costs. Connected M.P. Nos. 1 and 2 of 2007 are closed.