

(2009) 07 AP CK 0043

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5804 of 2006

Dasarla Koteswaramma

APPELLANT

Vs

Alla Venkayamma

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 85, Order 21 Rule 94, Order 47 Rule 1, 114

Citation : AIR 2009 AP 195 : (2009) 5 ALD 237 : (2009) 6 ALT 249 : (2009) 3 APLJ 122 : (2010) 8 RCR(Civil) 2256

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K.K. Chakravarthy, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S. No. 1587 of 2002 in the court of I Additional Junior Civil Judge, Guntur, against the respondent for recovery of certain amount. The suit was decreed on 29.06.2004 . During the pendency of the suit he secured attachment before judgment of an item of immovable property.

2. After the decree became final, the petitioner filed E.P. No. 1085 of 2004 for sale of attached property. After securing the permission of the executing court under Order XXI Rule 72 CPC, the petitioner participated in the sale, held on 19.04.2005. The petitioner deposited entire sale consideration and poundage. However, he did not deposit the cost of non-judicial stamp papers within 15 days from the date of sale. It was only on 23.6.2005 that the petitioner made such deposit.

3. Initially, the petitioner filed E.A. No. 1205 of 2005 u/s 148 CPC with a prayer to enlarge the time for deposit of the amount for purchase of non-judicial stamps. It was pleaded that the amount ought to have been deposited on or before 03.05.2005 and since the court was on vacation on that day, the amount

was deposited on 23.6.2005. The E.A. was dismissed through order dated 10.08.2005 on the ground that Rule 85 CPC does not permit any enlargement of time. Thereafter, the petitioner filed E.A. No. 734 of 2006 under Order XLVII Rule 1 read with Section 114 CPC with a prayer to review the order through which the sale was set-aside. The trial court dismissed the E.A. on 03.07.2006. Hence, this Civil Revision Petition.

4. Sri K.K. Chakaravathy, learned Counsel for the petitioner submits that though the petitioner was under obligation to deposit only 25% of the sale consideration from the date of sale, he deposited the entire amount duly adjusting the decretal amount and the amount towards cost of non-judicial stamps could not be paid in time. He submits that though the rigor of Rule 85 may operate against the sale consideration, the executing court has the power to enlarge the time for deposit of cost of non-judicial stamps.

5. The respondent was served with notice, but he has not chosen to enter appearance.

6. The undisputed facts are that the petitioner, who is decree holder, emerged as the highest bidder in the sale of the attached property, conducted on 19.04.2005. It is also matter of record that the petitioner adjusted the decretal amount and paid the balance of consideration on 19.4.2005 itself. However, he did not pay the cost of non-judicial stamps.

7. Order 21 Rule 85 CPC reads as under:

Time for payment in full of purchase money: The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72.

8. If the instant case is to be governed by the provisions extracted above, there would not have been any difficulty in acceding the request of the petitioner to enlarge the time for payment of non-judicial stamps. The Rule requires only deposit of sale consideration, before the expiry of 15 days from the date of sale and admittedly the petitioner deposited the entire sale consideration on the date of sale itself. However, the State amendment to Rule brings about a totally different picture. The provision, in its application to State of Andhra Pradesh reads as under:

Rule 85. Time for payment in full of purchase-money and of stamp for certificate of sale: The full amount of purchase-money payable and the general stamp for the certificate under Rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property:

Provided that in calculating the amount of purchase-money to be so deposited the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72.

9. From this, it is clear that not only the balance of sale consideration but also the amount required for general stamp for the certificate under Rule 94 or the amount required for such stamp shall be deposited before the expiry of 15th day. Admittedly that amount was not deposited before the stipulated time. When the petitioner wanted enlargement of the time, the trial court dismissed the E.A.

10. The failure to deposit the amount under Rule 85 of Order 21 CPC, automatically entails in cancellation of the sale and Rule 86 mandates that the resale of the property shall be conducted. There would not be any necessity to pass separate order setting aside the sale on account of failure of the bidder to deposit the amount. Sensing that his failure to deposit the cost of stamps results in cancellation of the sale or setting aside of the sale in his favour, the petitioner filed E.A. No. 734 of 2005 for review. Though the prayer in the E A is vague, it is obviously to review of the order in E.A. No. 1205 of 2005.

11. The learned Counsel for the petitioner placed reliance on the judgment of the Supreme Court in *Rosali v. Taico Bank and Ors.* 2007 (4) SCJ 641. That was a case where the initial deposit of 25% could not be paid on the date of sale on account of closure of Bank and the amount was deposited on the next day. The auction sale was set-aside on the ground that it was confirmed before expiry of 30 days from the date of acceptance of the bid. The aggrieved party filed a revision. In the revision it was pointed out that the sale was vitiated on account of non-deposit of 25% of the bid amount on the date of sale. The Supreme Court reviewed the law on the subject and took the view that since by the time the sale took place, the bank was closed, the amount was deposited on the next day and in that view of the matter there was compliance with Rule 84 of Order 21 CPC. Such is not the case here. The stamp duty was admittedly not paid by 3.5.2005 and it was only deposited on 23.6.2005.

12. The learned Counsel for the petitioner also relied upon the judgment in *The Public Prosecutor Vs. Konduru Venkata Raju*, In that case, the amount required under Rule 85 of the Order 21 CPC was deposited on the 16th day. This Court noticed that he approached the executing court on the 15th day itself for challan and on account of the delay on the part of court the challan was issued a bit later. It applied the principle "*actus curiae neminem gravabit*". It was held that the deposit made on next day would constitute compliance. The facts of the present case are quite different.

13. The judgment in *Venkataramanappa and Others Vs. T.M. Chalapathi*, , cited by the learned Counsel for the petitioner has no application for the facts of the present case.

14. The petitioner wanted the executing court to review its orders. The scope of the review is very limited. It is only when a substantial omission on the part of

the concerned court in taking note of important question of fact, or a relevant principle of law, is alleged, that there would be a possibility for the court to review its earlier order. Even if different view is possible in superior court, on the facts of the case, it cannot constitute a ground for review.

15. The Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs.