
(2005) 07 KL CK 0068
In the High Court Of Kerala
Case No : C.R.P. No. 300 of 2005 (A)

Dhanalakshmi Bank Ltd.

APPELLANT

Vs

Saritha Furniture Mart and Another

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 21 Rule 66, Order 21 Rule 66(2)

Citation : (2006) 3 JCR 116

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Judgement

J.M. James, J.—The short question that is raised for consideration in this Civil Revision Petition is, whether the execution Court, which originally fixed an upset price or reserve price, for the property proposed to be sold, could reduce the same on the ground that, there are no bidders to purchase the property for the price so fixed.

2. Dhanalakshmi Bank Limited, Mundur Branch, is the revision petitioner, and the decree holder in E.P. No. 226/2003 on the file of the Sub-Court, Thrissur. It brought to sale, I acre 23 cents of property at Vellattanjur village. Thalappilly Taluk of Thrissur District. The reserve price fixed was Rs. 5 lakhs. When the property was put on sale, there were no bidders. Therefore, the sale was adjourned. The revision petitioner, decree holder, filed an execution application, praying to reduce the upset price fixed, from Rs. 5 lakhs to Rs. 3.5 lakhs. But through the impugned order, the Court below, dismissed the prayer. Hence, this revision petition.

3. I heard both sides. The learned Counsel for the revision petitioner, decree holder, placed reliance on Kuruvila Thomas v. State Bank of Travancore (1989) 2 KLJ 485, where it was held that:

The Court cannot compel the decree holder to purchase the property at the reserve price fixed by the Court.

4. The learned Counsel for the respondents, judgment debtors, on the other hand, placed reliance on *The Federal Bank Limited Vs. K. Sreedharan and Others*, wherein it was held that:

(If) there is no tangible evidence on record showing the market value of the property at the time of the sale and the lower Court has to conduct an enquiry before fixing the reserve price in accordance with the market value prevalent in the area at the time of the sale.

5. In the case at hand, none of the parties could produce any material before the Court below, regarding the actual price that was prevalent in the locality. Even in Annexure "C", the decree holder had not mentioned about the actual value of the property in reference, regarding the market value in the area, except praying that the reserve price may be reduced from Rs. 5 lakhs to Rs. 3.50 lakhs.

6. In *The Federal Bank Limited Vs. K. Sreedharan and Others*, it is seen that, the decree holder filed a petition before the execution Court, to reduce the reserve price. It was rejected. Therefore, it came up before this Court, through a Civil Revision Petition. The facts reveal that, earlier the judgment debtors filed another Civil Revision Petition, and this Court directed the execution Court, to refix the reserve price. Considering the circumstances of the case, the reserve price was fixed basing on the statement filed by the decree holder. When the property was put to sale on several occasions, the sale did not take place, as there were no bidders. The Court below, therefore, closed the execution petition. Subsequently, another E.P. was filed, and the decree debt amount, which increased by then, was shown in the execution petition. The decree holder also filed petition, as stated above, to reduce the reserve price, relying on the valuation of the property made by the Tahsildar, and the valuation certificate produced. The Judgment debtors resisted the application. Relying on the above facts, this Court directed the execution Court, to conduct an enquiry, with regard to the prevailing market value, and fix the reserve price, in accordance with that market value of the property, as would be found by it. It was directed to proceed with the sale of the property thereafter.

7. In *A.U. Natarajan and Another Vs. Indian Bank*, the Division Bench of the Madras High Court had an occasion to consider Order XXI, Rule 66 of the Code of Civil Procedure, after the 1976 amendment of the Code. Before going into the real question, the Court examined the meaning of "Value", "Upset price" and "Reserve price". Relying on the dictionary meaning it was held that the word "value" means "to estimate or appraise as being worth a specified sum or amount; to estimate the value of (goods, property, etc.); to appraise in respect of value; to estimate or regard as having a certain value or worth". The term "upset" in relation to price means "stated as the lowest sum for which property exposed to auction will be sold; named as the sum from which bidding may start". It also means the lowest selling price of property in auction. "Reserve price" means "the lowest that will be accepted, at which bidding is started". Thus, the Court was laying down that the words "Value" and "upset price" are not

synonymous, but have entirely different meanings.

8. Keeping the distinction between the value of the property and fixation of upset price or reserve price for a property for sale in Court auction, the Division Bench had examined the second proviso to Rule 2(e) of Order XXI, Rule 66 of the Code of Civil Procedure. After elaborate discussions basing on various case laws and examining the procedure to be followed in conducting the auction, the Court laid down that when the Court fixes upset price, the Court is not determining the rights of any of the parties before it and the fixation of the upset price is only for facilitating the conduct of the sale and, at the same time, safeguarding the interest of the judgment debtor by fixing the reserve price. The Court was also of the opinion that the power of the Court to fix an upset price for the property includes, within it, a right to reduce the upset price, whenever necessary, and the said right is irremovable one. Therefore, it was held that as the lower Court had already fixed the upset price and since no bidders were available, the Court below had reduced the upset price for the property. Like the power to fix the upset price for sale of property, the said power also includes the power to reduce the upset price as well. The said action of the Court cannot be said to be in error of jurisdiction. There is no illegality or irregularity in the conduct of the Court in such instances.

9. In view of Order XXI, Rule 66 Sub-rule (2) of the CPC and the principles of law laid down in *A.U. Natarajan and Another Vs. Indian Bank, and The Federal Bank Limited Vs. K. Sreedharan and Others*, the law is clear that the Court has got power to fix an upset price or reserve price, basing on the value assessed through evidence adduced, by way of commission report or otherwise by either side, judgment debtor or the decree holder, from which the auction could commence, the upset price being the lowest price for sale of the proclaimed property. Even if the price bid is higher than the upset price, the judgment debtor is free to establish that the price for which the property was sold is less than what is available in the area and the decree holder had played fraud or other irregularities in bringing about sale of the property for such price. The Court also, basing on the evidence available on record, could reduce the upset price, if there are no bidders to purchase the property for the price so fixed, after hearing the judgment debtor in that regard.

10. In *Kuruvila Thomas v. State Bank of Travancore* 1989 (2) KLJ 485 (supra), the learned single Judge came to the conclusion that the property was held under mortgage. There was a commission report. The value of the property was suggested by the Commissioner, which, according to the decree holder, was too high. The decree holder was not willing to purchase the property, which was assessed as worth thirteen and odd lakhs of rupees by the decree holder, whereas the judgment debtors estimated the value of the property at about rupees thirty lakhs. The Commissioner estimated the value of the property at rupees twenty-four and odd lakhs. The decree holder was not willing to purchase the property for that price. Two auctions were held and there were no bidders. In

that case also, accepting the principle laid down in Dr. A.U. Natarajan's case AIR 1981 Mad 151 (supra), the reduction of the upset price was found to be legal. Therefore, the Court held that the decree holder could not be compelled to purchase the property at the reserve price fixed based on the commissioner's report in that case.

11. There being no material or evidence to show what exactly was the price of the property prevalent in the area, I direct the execution Court to conduct an enquiry, wherein both the judgment debtor and the decree holder are at liberty to adduce evidence with regard to the value of the property. The Court below shall, thereafter, refix the reserve price for the sale of the property and conduct the sale thereafter, according to law.

12. During the hearing, it was clarified from the judgment debtor that they are willing to sell the property through private sale and pay the decree amount, to which the revision petitioner, the decree holder, has got no objection. In such situation, the execution Court shall give opportunity to the Judgment debtors to sell the property through private sale. However, the execution Court shall ensure that the judgment debtors shall not attempt to protract the matter on the guise of entering into private sale of the property.

13. To facilitate the above, I set aside Annexure-D order dated 29.11.2004, In E.A. 1320 of 2004 in E.P. 226 of 2003 in O.S. 301 of 2000 of the Sub-Court, Thrissur, dismissing the prayer to reduce the reserve price as prayed for through Annexure C application by the decree holder.

14. I grant six months time from the date of production of a copy of this judgment before the Court below, to conduct private sale of the execution schedule property by the judgment debtors and to pay the amount covered by the execution petition to the decree holder. In case of any failure on the part of the judgment debtors to complete the sale as directed above, the decree holder is free to proceed with the execution through sale of the property. In such event, the execution shall start from the point where the same was stayed by this Court.

This civil revision petition is disposed of as above. Order accordingly.