
(1979) 11 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 14 of 1979

Gangavishan Heeralal

APPELLANT

Vs

Gopal Digambar Jain and Others

RESPONDENT

Date of Decision : 13-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 65, Order 21 Rule 84(1), Order 21 Rule 85

Citation : AIR 1980 MP 119 : (1980) JLJ 377 : (1980) MPLJ 246

Hon'ble Judges : S.J. Surana, J

Bench : Single Bench

Advocate : R.C. Lahoti, for the Appellant; B.L. Agarwal and B.S. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Surana, J.

The circumstances giving rise to this appeal by the judgment-debtor in short are these : In the course of execution of a decree obtained by respondent No. 1 against the appellant firm, certain house property of the latter was attached and put to sale. The sale was to be held on 26th, 27th and 28th of June 1978. The auction-sale proceedings commenced on 26-6-1978 as per the schedule within the precincts of the Court-house. Till 28-6-1978, there were no bidders forthcoming and as such the proceeding-were continued day to day, barring holidays, up to 7-7-1978 under orders of the Court. When this also failed to improve the matters, the Court passed an order on 10-7-1978 countermanding the sale warrant unexecuted. Subsequently, permission was granted to the decree-holder under Order 21 Rule 72 Civil P. C. to bid for and purchase the property and after a fresh proclamation, the attached house property was again put to sale fixing 18th, 19th and 20th September 1978 for that purpose. The auction sale was to be held within the Court precincts as before. Once again, the result was disappointing inasmuch as notwithstanding the fact that the sale

proceedings were continued day to day up to 29-9-1978 under orders of the Court, there was no bidder to advance the proceedings to a take-off stage. Undeterred, the proceedings were pressed on with the result that on 30-9-1978, the official bid of Rs. 25,000/- was raised to Rupees. 40,000/- by the decree-holder. Not satisfied, the Court ordered the proceedings to continue working day to working day as before.

The results started showing when on 4-10-1978, the highest bid recorded was Rs. 44,000/-; on 5-10-1978 it was Rs. 51,000/-; and on 7-10-1978 it reached Rs. 52,000/-. There was again a short lull but on 12-10-1978, a prospective purchaser came forward to throw his weight in the auction sale and that too for the first time. He was respondent No. 2 Govind Singh and it is he who took it to the pinnacle of Rupees 72,000/- by 28-10-1978. Hoping against hope, however, the sale was ordered to be continued till 15-11-1978 of which the net result was only this : the status quo prevailed throughout the period, i.e., up to the very fifteenth day of November 1978 with no bidder to be seen round-about to even register his presence. Strangely enough, respondent No. 2 Govind Singh was also sailing in the same boat though his was the ruling bid at Rs. 72,000/- till then. Even so, the Court ordered the sale proceedings to continue for yet another week. This proved to be a still-born move with the result that, at long last, on 22-11-1978, when the proceedings were laid before the Court, an order was passed obviously at the end of the day accepting the bid of respondent No. 2 Govind Singh.

It is then perhaps that for the first time it was realized that the bid has been accepted without ensuring presence of respondent No. 2 Govind Singh. There is, indeed, nothing in the record of the auction sale proceedings to show that respondent No. 2 Govind Singh was present when his bid was accepted or that he was informed any time on or after 28-10-1976 but before 22-11-1978 to appear and much less watch the proceedings up to the end because of his being the highest bidder.

It is only after his bid was accepted as above that on 23-11-1978, respondent No. 2 Govind Singh was officially informed under notice dated 23-11-1978 that the Court has accepted his bid dated 28-10-1978 under its order dated 22-11-1978 and as such no sooner he receives the notice than he should appear ready with money to deposit one-fourth of the amount of his purchase-money. Abiding by the notice as well as his own bid of Rupees 72,000/- as also without any protest, respondent No. 2 Govind Singh appeared before the Court on 23-11-1978 itself explaining the circumstances --quite correctly -- which made him part with the money (that he had kept ready to encash his bid in case of its proving the highest) and sought time to deposit the requisite amount of Rs. 18,000/-leaving it to the Court as to what would be the reasonable demand for time in the circumstances narrated above. Though the Court disposed of this application without any relief or guidance to the respondent No. 2 Govind Singh, yet it did accept his deposit on 24-11-1978 in satisfaction of the one-fourth of

the amount of his purchase money without any demur.

Thereupon, the judgment-debtor made an application on 29-11-1978 for setting aside the sale mainly on the ground of non-compliance of the provisions of Order 21, Rule 84 (1), Civil P. C. The application was dismissed on 30-1-1979 vide the impugned order holding that the one-fourth of the amount of his purchase money has been deposited by the auction-purchaser as required by law explaining that after all it takes some time to convey to the highest bidder that he has been declared as purchaser at the sale and that the term "immediately" occurring in Sub-rule (1) of Rule 84 of Order XXI, Civil P. C. means "without delay". It is this interpretation of the term in the above context that alone has been called in question in this appeal by the judgment-debtor who is pressing for setting aside the sale relying on the decision of the Supreme Court in *Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another*, .

The above-mentioned case is authority for the proposition 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 (as above) and the balance within 15 days. In other words, non-payment of the price as above on the part of the successful bidder renders the sale proceedings as complete nullity. The result would be the same even if there were default in payment of only the one-fourth of the purchase money immediately. The learned counsel for the respondent No. 2 (Govind Singh) would, however, have it that his client has fully and faithfully complied with the provisions of Sub-rule (1) of Rule 84 of Order XXI, Civil P. C. by depositing 25 per cent of the purchase money on 24-11-1978 in circumstances adumbrated earlier,

I may pause here to mention that the exact meaning of the term "immediately" in the present context did not come for determination in *Manilal v. Sayed Ahmed* (supra) whereas the fact of this appeal hangs entirely thereon. Now, under Rule 65 of Order XXI Civil P. C., save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or such other person as the Court may appoint in this behalf....And according to a local amendment, such officer or person shall be competent to declare the highest bidder as purchaser at the sale. But this is not all. It further says that where the sale is made in. or within the precincts of the Court-house, no such declaration shall be made without the leave of the Court. There is yet another local amendment by way of an explanation to Rule 85 to the effect that when an amount is tendered on any day after 1-00 P. M.. but paid into Court on the next working day between 11-00 A.M. and 1-00 P.M., the payment shall be deemed to have been made on the day on which the tender was made.

It is in the light of the above two provisions that the provisions of Sub-rule (1) of Rule 84 of Order XXI, Civil P. C. will have to be construed in order to resolve the present dispute. That sub-section reads :

"84. Deposit by purchaser and resale on 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 or other person conducting the sale, and in default of such deposit the property shall forthwith be re-sold." As may be seen, the obligation cast on the purchaser to pay immediately a deposit of 25 per cent of the amount of his purchase-money, arises only after he is declared to be the purchaser. As the things are here, such a declaration could not have been made by the officer conducting the sale on his own authority; nor did he make it. That apart, respondent No. 2 Govind Singh was not present on the spot or in the Court on 22-11-1978, when, as usual, at the end of the day, the matter was referred to the Court for further orders as the bid had remained static throughout the interval between 28-10-1978 and 22-11-1978 at Rupees 72,000/- in his name. Nevertheless, the Court accepted his bid and prepared itself to face the problem of making the requisite declaration. It was to be made on the spot in the presence of the successful bidder by the officer conducting the sale. Since this was impossible to achieve, the Court, albeit mercifully at the same time, directed the officer concerned to declare respondent No. 2 Govind Singh as purchaser at the sale and proceed to manage the deposit of 25 per cent of the purchase money by him. That was duly done vide noticed dated 23-11-1978. It is not clear from the return of service of this notice as to exactly at what point of time it was received by respondent No. 2 Govind Singh. According to the recipient, he received it at 4-00 P.M. on 23-11-1978. In this he must be believed because the process-server has not noted the time of service which he was duty-bound to do vide Rule 72 (1) of the Rules and Orders (Civil). The respondent No. 2 Govind Singh could have taken full advantage of this defect in the service of the notice, if so inclined. All he did however was to make a desperate attempt to seek time to make the deposit which did not yield any result, His problem now was to raise money to the tune of Rs. 18,000/- within what was left of the Court working time after 4-00 P.M. on 23-11-1978. Even if he had raised the money, it would not have been possible for him to tender much less deposit it by 5-00 P. M. on 23-11-1978. For, after all, certain formalities required by Rules and Orders (Civil) had to be attended to on both sides which were bound to consume further tune. Over and above all this, there is a bar on accepting any such deposit after a certain hour of any working day. If the law were understood to expect of him in the circumstance to make the tender if not the deposit before 5-00 P. M. on 23-11-1978, it would be as worse as giving the dog a bad name in order to shoot it.

Read in its own light, Sub-rule (1) of Rule 84 of Order XXT C. P. Code presupposes presence of the suc-cessful bidder on the spot as also the authority or the officer conducting the sale to accept his bid and to declare him purchaser

at the sale so that he must deposit the requisite one-fourth of his purchase-money then and there. Because of the local amendment to Rule 65, however, the last mentioned two conditions precedent to the deposit of the one-fourth of the purchase money "immediately", would seem to have lost their vigour in so far as this case is concerned. For, in the first place, the highest bid could be legally accepted by the Court alone, and in the second, the officer conducting the sale could not declare the highest bidder as purchaser at the sale without leave of the Court. The third problem was of establishing contact with the highest bidder which had to be solved. All this was bound to take time as it did upto 4-00 P. M. of 23-11-1978. And, as already observed, the remaining time of that working day was pitifully short for even tendering the deposit. That being so, I find it exceedingly difficult to persuade myself to agree to the proposition that the term "immediately" must be understood to mean as excluding all mesne time and as such, the deposit admittedly made on 24-11-1978 must be dismissed as invalid rendering the entire sale proceedings as a nullity (so as to place the auction purchaser in the position of a defaulter). And all this because, honest to his word, as promptly as could be said to a fault, and despite all odds, he willingly co-operated with the Court in making good its mistake in springing a surprise on him which was sure to prove a bolt from the blue. The situation admits of an apt reference to the following observations of Krishna Iyer, J. in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*,).

"To be truly a "Portia man" the lawyer should follow the way in which Portia avoided an unjust decree. Not to let the words of the deed be the masters: but so construe them -- adapt them as the occasion demands -- so as to do what justice and equity require. This is how she turned the tables on Shylock :"

The term "immediately", in my opinion, on the facts and in the circumstances of this case, cannot be assigned that strict meaning as to exclude all mesne time, irrespective of any consideration whether reasonable or not. That would be tantamount to turning protection of law into uncalled for punishment, that is what some times happens when reason takes the place of reasonableness rather than blend with it in a happy union.

In AIR 1948 142 (Nagpur)) Hidayatullah, J. construed the word "forthwith" occurring in the very sub-rule under the present scrutiny to mean "within a reasonable time" observing as under :

"In all cases where the word "forthwith" occurs it must ordinarily be understood to mean "within a reasonable time", and quoted with approval the following passage from Maxwell's Interpretation of Statutes on page 143 of the report :

"When a statute requires that something shall be done "forthwith", or "immediately", or even "instantly", it would probably be understood as allowing a reasonable time for doing it."

In this connection, I may usefully refer to the following observations on pages 102-103 in Volume 37 of Halsbury's Laws of England, Third Edition :

"Where anything is limited to be done within a "reasonable time" or at a "reasonable hour", the question what is a reasonable time or reasonable hour must necessarily depend on the circumstances of the particular case, and is, therefore, a question of fact." followed by a comparative look at the terms "immediately" and "forthwith" as below :

"There appears to be no material difference between the terms "immediately" (s) and "forthwith" (t). A provision to the effect that a thing must be done "forthwith" or "immediately" (a) means that it must be done as soon as possible (b) in the circumstances, the nature of the act to be done being taken into account (c)."

"Within a reasonable time" would thus appear to be a better substitute for "without delay" while construing the term "immediately" for the purpose at hand. So understood, I have not the slightest hesitation in holding that the deposit of the one-fourth of the amount of his purchase-money by respondent No. 2 Govind Singh on 24-11-1978, having regard to the facts and the circumstances of this case, was perfectly in accordance with the provisions of the law.

In the result, the appeal fails and is dismissed with costs confirming the impugned order. Respondents' costs shall be borne by the appellant Hearing fee Rs. 200/-.