
(2014) 06 MAD CK 0067

In the Madras High Court

Case No : Civil Revision Petition No. 2958 of 1996

Govindaraja Reddiar

APPELLANT

Vs

The Indian Bank

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 90

Citation : (2014) 3 LW 766

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Judgement

R. Karupiah, J.—This Civil Revision Petition has been filed against the rejection order passed in un-numbered I.A. No./1996 in O.S. No. 164 of 1980 on the file of the Subordinate Court, Tindivanam. Heard the learned counsel appearing for both sides.

2. A perusal of the records available on file revealed that the first respondent-Indian Bank filed a suit in O.S. No. 164 of 1980 and obtained a preliminary decree on 20.04.1980 and final decree on 20.03.1985. As per the above said preliminary decree, the first respondent-Indian Bank has filed an execution petition in E.P. No. 37 of 1990 under Order 21, Rule 66 of the Civil Procedure Code to sell the mortgage property, since the amount has not been paid by the Judgment-Debtor. It is also revealed that five items of properties mentioned in the execution proceedings were sold on 24.04.1996 in Court auction sale to the second respondent, who is the third party in the execution proceedings. After the Court auction sale, the case was posted on 01.07.1996 for confirmation of sale and the same is subject to result of civil revision petition in C.R.P. No. 828 of 1996 filed by the deceased first revision petitioner, which was pending before this Court.

3. In the mean time, the deceased first revision petitioner herein filed a petition under Order 21, Rule 90 C.P.C., before the Executing Court with a petition for seeking permission to furnish security. The Executing Court has perused the

above said petition and returned on 15.07.1996 on the ground that the deceased first revision petitioner has not paid the Court fee and not produced a copy of the Encumbrance Certificate for the property by giving three days time for rectification. The above said petition was represented by the deceased first revision petitioner on 19.07.1996 without Encumbrance Certificate but given an undertaking to produce Encumbrance Certificate. The Executing Court awaited till 23.07.1996 and since the deceased first revision petitioner has not produced Encumbrance Certificate, the Executing Court has passed a rejection order, which reads as follows:

Aggrieved over the above said rejection order, this revision petition has been filed by the deceased first revision petitioner.

4. The learned counsel appearing for the revision petitioners would submit that the revision petitioners are entitled to file an application to accept the security at any stage of the proceedings. But, the Executing Court, without applying its mind rejected the application on the ground that the deceased first revision petitioner had not furnished sufficient security and therefore, the above said order is illegal.

5. Per contra, the learned counsel appearing for the respondents would submit that the first respondent has filed an execution petition, since the deceased first revision petitioner has not paid the amount as per the decree and the first respondent has brought the properties on the Court auction sale. The second respondent, who is the third party purchased the property in Court auction safe and during the pendency for confirmation of sale, this petition has been filed by the deceased first revision petitioner without furnishing sufficient documents, in spite of sufficient opportunity given to the deceased first revision petitioner for furnishing documents and therefore, the Executing Court has rightly rejected the petition and there is no need to interfere with the above said order.

6. The learned counsel appearing for the first respondent further submitted that after passing the above said rejection order, the sale was confirmed and the execution proceedings were terminated, but the revision petitioners have not challenged the above said order passed in the executing proceedings and only challenged the order passed in the petition for permission to furnish security and therefore, the civil revision petition is not maintainable.

7. The learned counsel appearing for the revision petitioners would submit that without giving any opportunity to the deceased first revision petitioner, the Executing Court has rejected the relief and therefore, the above said order is to be set aside.

8. In support of his contention, the learned counsel appearing for the revision petitioners relied on a decision of this Court reported in S.K.S. Rajamani Nadar and another Vs. Tuticorin Small Scale Salt Manufacturers Association and another, . A perusal of the above said decision revealed that the facts of the above said case is not applicable to the facts of the present case. In the above said case, the Judgment-Debtor prayed for setting aside the sale and also prayed

for dispensing with furnishing the security in terms of the Proviso to Order 21, Rule 90 C.P.C. The Executing Court has rejected the above said petition without giving any opportunity. But, in the instant case, the deceased first revision petitioner himself filed a petition to accept the security without producing necessary documents and inspite of sufficient opportunity to the deceased first revision petitioner, failed to produce the necessary documents. Therefore, the facts of the above said decision is not applicable to the facts of the present case.

9. On the side of the revision petitioners have not given any acceptable reason for not producing the necessary documents as called for by the Executing Court, The Executing Court has rejected the petition filed by the deceased first revision petitioner on valid grounds as rightly pointed out by the learned counsel appearing for the respondents. It is also revealed from both side submissions that in the main execution proceedings, sale was confirmed delivery of properties were given to the second respondent/Court auction purchaser and main execution petition was terminated and it is not challenged so far by the revision petitioners. In the above said reasons, there is no need to interfere with the above said findings of the Executing Court. In the result, this Civil Revision Petition is dismissed. No order as to costs, Consequently, the connected Miscellaneous Petition is also closed.