(1979) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3442 of 1978

Guttala Chandra Rao APPELLANT

Vs

Dubburi Veera Venkata Satyavathi and Another RESPONDENT

Date of Decision : 16-01-1979

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 — Rule 203(1)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : AIR 1979 AP 303

Hon'ble Judges : Venkateswara Rao, J

Bench : Single Bench

Advocate : C.V. Kanyakaprasad, for the Appellant; P. Satyanarayana Raju, for the Respondent

Judgement

Venkateswara Rao, J.—This revision is directed against an order made by the learned Principal District Munsif, Amalapuram in E.A. No. 536/77 and confirmed in appeal by the Subordinate Judge, of the Same place.

2. Certain properties belonging to the petitioner were sold in execution of decree which the first respondent herein obtained against him in O.S. No. 830/71. The second respondent Purchased those properties in that execution sale, The petitioner thereafter applied to the executing court in E. A. No. 536/77 for setting aside the sale under O. 21, R. 89, C.P.C . after depositing the sale warrant amount and solatium as required by R. 89 (1) (a) and (b) of the Code. While allowing this petition, the Court directed the judgment-debtor to pay the poundage, besides other costs and interest, if any, within one week from the date of its order ignoring the contention of the judgment-debtor that no poundage need be paid by him since it has already been collected from the auction-purchaser and that that amount alone has to be refunded when the sale is set aside. Attention of the learned District Munsif was invited to a note appended to R. 203 of the Civil Rules of Practice in support of the contention that no poundage need be collected from the judgment-debtor This note provides that

the sum deducted as poundage from the amount deposited by the purchaser must be ''refunded'' to him when a sale is set aside under O. 21, R. 89, C.P.C. The Teamed District Munsif does not appear to have considered the effect of this note as the particular edition of the Rules of Practice that was referred to by him, did not contain this note. But, having regard to the provisions of R. 203 (1), he directed the judgment debtor to deposit the poundage, besides other costs and interest, if any, while allowing his application for setting aside the sale. This order was confirmed in appeal by the Subordinate Judge, Amalapuram. Aggrieved by it, the judgment debtor has preferred this revision.

3. Learned counsel for the petitioner argues that the note appended to R. 203 of the Civil Rules of Practice should have been taken into account by the courts below in order to appreciate his contention that no poundage need be collected from a judgment-debtor while allowing his application for setting aside a sale under O. 21, R. 88, C.P.C. as according to him, a careful study of this note would reveal that sub-rule (1) of Rule 203, in so far as it provides for an order of payment of poundage by the judgment-debtor, is but an empty formality. In other words, he says that since the poundage collected from the auction purchaser has to be rendered or paid back to him when a sale is set aside under O. 21, R 89, C.P.C., no purpose, whatsoever, will be served by compelling the judgment-debtor to pay once again poundage also as a condition precedent for setting aside the sale. No doubt, the expression used in the note is ''refunded''; but it should not be forgotten that the object of sub-rule (1) is to ensure that poundage, which goes to the State, should not be lost when a sale is set aside. It is not in dispute that poundage is in the nature of a commission for the purpose of conducting the sale. So, if the pound age collected from the auction-purchaser is refunded when a sale is set said under O. 21, R. 89, C.P.C. without getting the amount replenished, the State which is legitimately entitled to the commission, will be the ultimate loser. So, it is only proper that the judgment debtor, at whose instance the sale is set aside, should be made to bring into Court an amount equal to the poundage that has got to be refunded to the auction purchaser when a sale is set aside under O. 21, R. 89, C.P.C. Simply because the word ''refunded'' is used in the note appended to R. 203, it does not follow that nothing at all need be credited to State towards poundage, which, as ready stated, is in the nature of a commission for conducting the sale. In this view, therefore, it has to be said that this petition for revision is without merit and it is accordingly dismissed with costs.

4. Revision dismissed.

