

(2004) 07 AP CK 0040
In the Andhra Pradesh High Court
Case No : CRP No. 5647 of 2003

J. Ramalakshmi

APPELLANT

Vs

M.V.R.K. Mutyalu

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

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

Citation : (2004) 5 ALD 284

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ganta Suryanarayana, for the Appellant; Venkata Ramana, for D.V. Sitarama Murthy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—A short but important question falls for consideration in this revision viz., whether it is permissible for depositing of general stamp under Rule 85 of Order XXI C.P.C. beyond the time stipulated therein.

2. The respondent filed O.S. No. 73 of 1990 in the Court of Senior Civil Judge, Amalapuram against the petitioner for recovery of a sum of Rs. 1,55,000/- with interest. The amount was borrowed by the petitioner on the strength of mortgage. A preliminary decree was passed on 7.7.1997. Thereafter, final decree was passed on 5.3.1999. Since the petitioner did not comply with the same, respondent filed E.P. No. 78 of 1999. The sale of the mortgaged property was conducted on 17.4.2002. The respondent also participated in the auction, with the permission of the Court, and emerged as the highest bidder for a sum of Rs. 5,85,000/-.

3. Since the respondent, the decree-holder, is the highest bidder, there was no necessity for him to deposit the bid amount, in view of Rule 72 of Order XXI C.P.C. However, there is no exemption from depositing the stamps within 15 days from the date of auction, under Rule 85. The Court closed for vacation from

1.5.2002 and it re-opened on 1.6.2002. On the reopening day, the respondent applied for issuance of challan. The Presiding Officer passed an order on that day itself for issuance of challan. However, the amount was not deposited within the time. It was only through order dated 27.8.2002 that the Executing Court received a sum of Rs. 29,250/-, towards cost of stamps. The petitioner challenges the order dated 27.8.2002 passed by the Executing Court on the ground that it was not competent for it to have permitted depositing of the stamps, after expiry of 15 days from the date of auction.

4. Sri Ganta Suryanarayana, learned Counsel for the petitioner, submits that the time stipulated under Order XXI, Rule 85 C.P.C., as amended by the State of Andhra Pradesh, cannot be extended under any circumstances, and the consequences provided for under Rule 86 have to follow, on non-compliance with the same. He further contends that the Executing Court does not have the jurisdiction to receive the stamps beyond the time stipulated under Rule 85. He places reliance upon the judgments of this Court rendered in Mudragada Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, and Kudiya Ramana Vs. Vattikolla Somaraju and Others, .

5. Sri Venkata Ramana, learned Counsel appearing for Sri D.V. Sitarama Murthy, Counsel for the respondent, on the other hand, submits that the respondent has applied for issuance of challan, within the time stipulated, under Rule 85 and thereby, the process for depositing of the stamps has commenced. According to him, the delay in completion of the entire process was not attributable to the respondent and, at any rate, once the process has commenced within time, the requirement of Rule 85 stands complied with. He relies upon two judgments rendered by Division Bench of this Court reported in M. Suryanarayana Rao v. Bommana Chinna Konda Reddi AIR 1958 AP 472 and The Public Prosecutor Vs. Konduru Venkata Raju,

6. The decrees obtained by the respondent against the petitioner in a mortgage suit became final. He filed E.P. No. 78 of 1999 for sale of the mortgaged property. After obtaining permission of the Executing Court, under Rule 72 of Order XXI C.P.C., he participated in the auction held on 17.4.2002 and emerged as the highest bidder for a sum of Rs. 5,85,000/-Rule 85 of the said Order prescribes 15 days, for full payment of the purchase-money, from the date of sale of the property. This rule was amended by the State of Madras to the effect that the purchase-money as well as the general stamp for certificate under Rule 94 or the amount required for such stamp shall also be deposited within 15 days. This amendment was adopted by the State of Andhra Pradesh. Himself being the decree-holder, the respondent was not under obligation to pay the purchase-money. However, he is under obligation to deposit the stamps, or pay the money required for the stamps, for conveyance of the property.

7. It is not in dispute that the sale took place on 17.4.2002. The respondent had time till 2.5.2002 for depositing the stamps or to pay the money for purchase of the stamps. The amount was Rs. 29,250/-. The vacation for the Trial Court

started with effect from 1.5.2002 and it reopened only on 1.6.2002. Therefore, the respondent had the benefit of the entire period of vacation. He was entitled to deposit the stamps or money for the same on 1.6.2002.

8. The language employed in Rule 85 is clear and it does not permit of any extension of time, stipulated therein. The consequences provided for in Rule 86 clearly indicate that on the failure of compliance with Rule 85, the sale itself stands cancelled and the amount deposited, if any, by the successful bidder stands forfeited.

9. In *Suryanarayanamurti's* case (supra), a Division Bench of this Court considered the purport of Rule 85 of Order XXI C.P.C. It was a case where the successful bidder deposited a sum of Rs. 36/- towards general stamp for issuance of sale certificate, whereas the requisite stamp was of Rs. 45/-. The balance of Rs. 9/- was deposited beyond 15 days, prescribed under Rule 85. After discussing the relevant provisions and decided cases, this Court held that there was a non-compliance with Rule 85 and the sale was non-existent in law. To the same effect is the judgment of this Court in *Kudiyala Rama's* case (supra). It is, therefore, evident that there is no power in the Executing Court to extend the time stipulated under Rule 85 of Order XXI C.P.C. either for depositing the purchase-money, or stamps or their equivalent amount.

10. It, however, needs to be seen that the depositing of stamps and, in particular, the amount equivalent to stamps into the Court is a complex process involving various stages. It is not as if the auction-purchaser is entitled to make the deposit straightaway. He had to be issued a challan by the Executing Court after verification of the records. If the process for making a deposit is started within the time stipulated, the fact that the remaining part of it had taken place subsequent to 15 days should not be permitted to defeat the rights of an auction-purchaser. In *M. Suryanarayana Rao's* case (supra). Chief Justice Koka Subbarao, as he then was, speaking for the Bench, held that if the auction-purchaser had applied for challan, for the purpose of depositing the amount of purchase-money for general stamp, he can be said to have complied with Rule 85. For this proposition, reliance was placed on the judgments of Patna High Court in *Bijoy Singh Vs. Raja Kirtyanand Singh and Others*, (B) and that of the Madras High Court in *Srinivasa Bhatta v. Malayacha Mannadi* ILR 7 Mad. 211 (A). The relevant passage reads as under:

"The principle of the aforesaid two decisions is that, if the decree-holder-purchaser discharged his duty in applying for the challan and if he was prevented from depositing the amount within the prescribed date, not by his default but by the action of the Court of the treasury concerned, the deposit must be deemed to have been made within the time prescribed. In such circumstances, it is deemed that the mandatory provisions of the statute are complied with."

This was followed by another Division Bench comprising Chief Justice Chandra Reddy, and Narasimham, J., in *Raghavulu's* case (supra). The necessity of

obtaining challan from the Court, before depositing the money, was taken note of and the inaction or delay on the part of the Court in issuing challan to the parties, though applied for within the time, was held as a factor, not to defeat the rights of the auction-purchaser. In a way, it can be said that initiation of steps for depositing the stamps within time, would stop the time from running, till the completion of the process. This, however, is subject to the auction-purchaser complying with the steps ordained by the executing Court. The situation is comparable to presentation of an otherwise defective appeal within the period of limitation and curing of the defect, subsequently.

11. It is not in dispute that the respondent applied for issuance of challan to the Executing Court on 1.6.2002. A perusal of the record discloses that the learned Presiding Officer passed appropriate orders for issuance of challan at 7.30 p.m. Learned Counsel for the petitioner submits that the Court shall be deemed to have functioned only till 5.00 p.m. and passing of an order for issuance of challan at 7.30 p.m. cannot be recognized for the purpose of Rule 85. Though it may be true that the order was passed at 7.30 p.m., it is not clear as to when the respondent applied for it. If it were to be a case where the application itself was made beyond the prescribed time, the Court itself would have refused to accept it. The fact that the order for issuance of challan was passed at 7.30 p.m. discloses the concern of the Executing Court to ensure that the rights that have accrued to the respondent are not defeated, on account of the delay on the part of the Court, in considering the application for issuance of challan.

12. Once the challan was applied for within the stipulated time, the fact that the subsequent steps came to be taken at a later point of time hardly makes any difference. From the endorsement, which is the subject-matter of this revision, it is evident that the Executing Court had received the amount covered by the challan. The various stages through which the proceedings have passed, disclose that on one pretext or the other, the efforts of the respondent to deposit the amount were thwarted either by the Ministerial staff of the Court or the petitioner. The delay cannot be attributed to the petitioner. It was only in the month of August 2002 that the Executing Court had received the amount, necessary for purchase of stamps. Therefore, it cannot be said that the Executing Court committed any illegality or that the steps taken by it suffer from any infirmity. It is also brought to the notice of this Court that the sale itself was confirmed on 27.7.2002. Though the learned Counsel for the respondent had made submissions on the strength of Rule 90 of Order XXI C.P.C., this Court feels it not necessary to delve into that aspect, since it is held that the steps taken by the Executing Court are lawful and do not suffer from any infirmity.

13. The civil revision petition is accordingly, dismissed.