
(2003) 01 AP CK 0047
In the Andhra Pradesh High Court
Case No : CRP No. 6140 of 2000

Kudiyala Ramana

APPELLANT

Vs

Vattikolla Somaraju and Others

RESPONDENT

Date of Decision : 02-01-2003

Acts Referred:

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

Citation : AIR 2003 AP 215 : (2003) 2 ALD 93 : (2003) 6 ALT 730

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A.S.C. Bose, for the Appellant;

Judgement

P.S. Narayana, J. 1. The revision petitioner filed the civil revision petition u/s 115 of the CPC questioning the order of the Junior Civil Judge, Prathipadu in E.A.S.R.No. 3014 of 2001 in E.P.No. 45 of 1998 in O.S. No. 44 of 1995 dated 20.11.2001.

2. The facts in brief are as follows:

3. The revision petitioner is the auction purchaser. The petitioner participated in the above E.P. sale proceedings and became the highest bidder and the sale was knocked down for Rs. 67,000/- in his favour on 31-7-2001. The petitioner paid an amount of Rs. 16,750/ on 31-7-2001 i.e., 1/4th amount of Rs. 67,000/-. It is further stated that the petitioner applied for challan for the deposit of me remaining sale consideration and for the general stamps (i.e.,) N.J Stamps and it was also stated that a specific mention was made in this regard in the application. But, however, the challan was not issued for general stamps. The petitioner also stated that he applied for challan in time and also submitted lodgment schedule. There was neither default nor negligence on his part due to the reasons stated supra and the petitioner was unable to comply with the requirement of stamps under Order 21, Rule 85 of the Code of Civil Procedure. In such circumstances, the petitioner filed E.A.S.R.No. 3014 of 2001 in E.P.No. 45 of

1998 in O.S.No. 44 of 1995 on the file of Junior Civil Judge, Prathipadu praying for issue of challan for deposit of General stamps (i.e.,) N.J. Stamps to comply with Order 21 Rule 85 C.P.C. and to pass suitable orders. The learned Junior Civil Judge, Prathipadu by order dated 20.11.2001 had rejected the petition on the ground that the challan cannot be issued after the expiry of prescribed period for deposit of amount required for the sale certificate. Aggrieved by the said order, the present civil revision petition is preferred.

4. All the respondents were served and none of them are represented by Counsel.

5. The Counsel for the petitioner Sri Subhash Chandra Bose had taken me through the impugned order and had contended that the learned Junior Civil Judge, Prathipadu had not properly appreciated the scope and ambit of Order 21, Rule 85 and also Order 21, Rule 86 of the C.P.C. The learned Counsel further submitted that the words in Order 21, Rule 85 of the C.P.C are "the full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property". The learned Counsel also contended that in the present case though in the column the amount relating to the deposit of N.J. Stamps also had been specified the said amount was not deposited. Hence, in such circumstances, the learned Junior Civil Judge, Prathipadu had totally erred in not exercising the discretion and not extending the time by issuing the challan. The learned Counsel also submitted that at any rate even if the expression referred to supra has to be construed as amount inclusive of the deposit of amount relating to N.J.Stamps at least the learned Junior Civil Judge, Prathipadu should have exercised the discretion of ordering refund of the amount which had been deposited by the petitioner/ auction purchaser.

6. Heard the learned Counsel at length and perused the material available on record. The facts are already narrated above and they need not be repeated again. It is not in dispute that deposit relating to N.J.Stamps had not been made within time and the application was moved for this purpose and the same was rejected. Order 21, Rule 85 of the CPC reads as follows:

Time for payment in full of purchase money :--The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72.

7. In Mudragada Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, , the Division Bench of this Court had arrived at a conclusion that where full deposit of amount required for general stamp for sale certificate is not deposited by auction-purchaser within fifteen days, the sale is nullity and the property has to be resold and time for deposit cannot be extended. In Ambati Raghavalu v. Mova Venkamma, The Public Prosecutor Vs. Konduru Venkata Raju,

yet another Division Bench of this Court had arrived at a conclusion that failure to comply provisions of Order 21 Rule 85 C.P.C will make the sale ineffective and the same view was expressed in *Mool Chand Vs. Collector, Jalaun and Others*, . In *Subbammal Vs. P. Gurusamy Thevar and Others*, , it was held that the provisions of Order 21, Rule 85 C.P.C are mandatory though the purchase money was deposited within prescribed time and deposit of general stamps was not proper, the Court has no jurisdiction to extend time for payment of the deficient stamps. The same view was expressed in *M.M.Shah v. Syed Mahmad* 1954 2 MLJ 55 and also in *Dandigunta Venkataramaiah and Another Vs. Dandigunta Audinarayanaiah and Others*, No doubt in *Mathai Varkey and Another Vs. Varughese Chacko*, , while dealing with Order 21, Rule 85 of the C.P.C. as amended in Ker, it was held that the principle that a procedural enactment has to be construed liberally and in such manner as to render enforcement of substantive rights effective has to be applied to obviate injustice as well as absurd consequences.

8. However, in view of the binding decisions rendered by this Court, I am of the considered opinion that there is no illegality or any legal infirmity in the order passed by the learned Junior Judge, Prathipadu in rejecting the application. The matter does not stop there. The learned Counsel placed strong reliance on Order 21, Rule 86 of the C.P.C. and also on the ground of equity and vehemently had contended that the petitioner is an unfortunate poor auction purchaser who had participated in the auction and by a bona fide mistake the amount relating to N.J. Stamps had not been deposited and it is a fit case where instead of forfeiting the amount refund has to be ordered. The learned Counsel had pointed out the relevant portions where a mention has been made relating to the deposit of N.J.Stamps also, in the application.

9. Order 21, Rule 86 of the C.P.C reads as follows:

Procedure in default of payment :--In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

10. Inasmuch as forfeiting the amount or directing the refund of the amount being within the discretion of the Court depending upon the facts and circumstances, after taking into consideration the peculiar facts and circumstances of the present case, in the interests of justice a direction is issued to refund the amount already deposited by the petitioner after making such permissible deductions as per law within a period of fifteen days. It is no doubt true that such contention was not advanced before the learned Junior Civil Judge, Prathipadu. But, however, instead of again driving the party to the said Court, in view of the peculiar facts and circumstances the aforesaid direction is being issued and except this relief no other relief can be granted in the civil revision petition.

11. Accordingly the Civil Revision Petition is disposed of.