(1957) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 851 of 1 (sic)

M. Suryanarayana Rao APPELLANT

Vs

Bommana Chinna Konda Reddy RESPONDENT

Date of Decision : 05-12-1957

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 84, Order 21 Rule 85, 73

Citation : AIR 1958 AP 472

Hon'ble Judges : K. Subba Rao, C.J;Srinivasachari, J

Bench : Division Bench

Advocate : N. Subrahmanyam, for the Appellant; O(sic) Chinnappa Reddy and C. Padmanabha Reddy, for the Respondent

Judgement

K. Subba Rao, C.J.—This is a revision against the order of the learned Subordinate Judge, Kurnool, excusing the delay in depositing in Court the amount representing the poundage and the amount required for purchasing stamps for the sale certificate.

2. The facts that have given rise to this revision may be briefly narrated. In execution of the decree obtained in O. S. No. 69 of 1951 on the file of the Subordinate Judge''s Court, Kurnool, the decree-holder brought items 1, 4 and 5 mentioned in the attachment list for sale and purchased them on 21-9-1953 for a sum of Rs. 3,380/-. Before purchase, he obtained the leave of the Court to bid and set off and, therefore, the purchase money was set off in part satisfaction of the decree amount.

He deposited the amount required for the stamp and poundage on 8-10-1953. As there was delay in depositing the said amount, he filed the application out of which this revision has arisen for excusing the delay. The Judgment-debtor opposed that petition on the ground that the provisions of O. 21, Rr. 84 and 85, which regulate the conditions for deposit of various sums, are mandatory in nature and that, as the decree-holder-purchaser did not deposit the said amounts within the time prescribed by the rules, the Court has no jurisdiction to excuse the delay. The learned Subordinate Judge held that the non-deposit of the said amounts within the time prescribed constitutes only an irregularity and, in that view, excused the delay. Hence, the revision.

3. The learned counsel for the respondents had raised a preliminary objection to the maintainability of the revision. But as, we are disposing of the case on merits, it is not necessary for us to express our opinion on the said question.

4. The material provisions of the CPC and the Civil Rules of Practice may be read at this stage. Order 21, R. 72, C. P. C. reads:

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase money and the amount due on the decree may subject to the provisions of S. 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

Rule 84:

(1) On every sale of immovable property the person declared 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.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase money under R. 72, the Court may dispense with the requirements of this rule.

Rule 85, which was substituted by G. O. Misc. No. 2922 Home, dated 28th October, 1936 reads:

The full amount of the purchase-money payable and the general stamp for certificate under R. 94 or the amount required for such stamp Shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the date of 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 R. 72.

Rule 86:

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

Rule 200 of the Civil Rules of Practice reads:

... If the applicant purchased the property with the leave of the Court, and is allowed, to set-off the purchase money against any sum due to him, he shall pay the amount chargeable for poundage to the person appointed to sell the property so soon as he is declared to be the purchaser. The amount deducted or paid on account of poundage shall form part of the costs and expenses of the sale.

Rule 205 :

If at any time it is made to appear to the Court that the applicant has failed to comply with any order of the Court, or any of the provisions of the Code or these rules or is not proceeding with due diligence, the Court may make such orders as to the application for sale, or the suit or matter, and the costs thereof, as it thinks fit.

The aforesaid provisions may be summarised thus : In the case of a decree-holder-purchaser, who purchased the property with the express permission of the Court, the purchase money and the amount due on the decree may be set-off against one another. On the date of the sale, ordinarily, the purchaser shall pay immediately a deposit of twenty-five per cent. on the amount of the purchase-money to the Officer conducting the sale.

But, where the decree-holder purchaser the property with the previous permission the Court, the Court may dispense with the requirement of this rule. Again, in the ca(sic) of a third party purchaser, the balance of (sic) purchase-money and the amount required stamp for the certificate shall also be deposited within fifteen days from the date of the s(sic) of the property. But in the case of a decree holder, who purchases the property with previous permission of the Court, he is entitle to a set-off as per the terms of rule 72 of Order XXI. Notwithstanding, the fact that decree-holder-purchaser is entitled to a statute set-off, he is bound to deposit in Court amount chargeable for poundage so soon as is declared to be the purchaser.

5. The learned counsel for the petitioner contends that, in the present case, there is specific order within the meaning of R. 84 of Order 21 dispensing with the requirement of R. 84 (1) and, therefore, decree-holder-purchaser should have deposit the twenty-five per cent, of the purchase money so soon as he was declared to be purchaser. The order directing set-off is placed before us.

It is not possible to hold on the mat(sic) placed before us that the Court did not (sic)pense with the obligation cast upon the (sic)chaser under R. 84 (1). It may be presu(sic) in the absence of evidence to the cont(sic) that the learned Judge, having given decree-holder the requisite permission to and purchase, would have also dispensed the requirement of R. 84 (1). We ca(sic) therefore, say that, in the present case, mandatory provision of R. 84 has been travened.

6. The next argument is that the am(sic) required for the general stamp for certified was not deposited by the decree-holder chaser, within fifteen days from the da(sic) sale of the property. In the Court below, sumably because the

provisions of R. 85 ignored or overlooked, both the parties ceeded. on the basis that there was a del(sic) three days at the time when the challa(sic) respect of the amount required for the (sic) was applied for.

The decree-holder-purchaser, under provisions of R. 85, had the right to d(sic) the amount required for the stamp o(sic) fifteenth day from the date of the sale (sic) property. He applied for challan for amount on the third day after he was de(sic) to be the purchaser. There is no mater the record to hold that the decree-holder in default after he applied for the challan.

It has been held by the Madras Court in Srinivasa Bhatta v. Mali Mannadi, ILR 7 Mad 211 (A), that a pa(sic) into the Government Treasury is equival(sic) a payment into Court for the purpose of (sic) of the Code of Civil Procedure, 1882, (sic) under the whole money ought to be dep(sic) the purchaser by the fifteenth day after sale.

In that case, on the fourteenth day after sale, the petitioners obtained a challan and (sic)seated the balance of the purchase money (sic)re the Treasury Officer, but he declined (sic)receive it as the account for the day had (sic) made up. The next day, Saturday, was holiday; on the Monday, following, the (sic)ey was paid into the treasury and receipts (sic) obtained.

The Court held that the treasury becomes, the purpose of payment, under the rules the High Court, part of the establishment (sic)e Court and that, under the circumstances, payment was in time. In Bijoy Singh Vs. Raja Kirtyanand Singh and Others, , Patna High Court held that, when the (sic)on-purchaser came to the Court at opening hour of the fifteenth day with the (sic)ey, prepared to make his deposit and dili(sic)y took the steps required by the Departmental Rules, he could not be held responsible the obstruction which was caused by the (sic) in passing the Challans.

The principle of the aforesaid two deci(sic) is that, if the decree holder-purchaser (sic)arged his duty in applying for the challan if he was prevented from depositing the (sic)nt within the prescribed date, not by his (sic)lt but by the action of the Court or the (sic)ry concerned, the deposit must be (sic)ed to have been made within the time (sic)ribed. In such circumstances, it is deem(sic) at the mandatory provisions of the statute complied with.

It is as if the amount was paid within the prescribed. In this case, there is nothing (sic)e record from which we could hold that, the respondent applied for the challan in (sic), he was guilty of any laches, (sic)t appears to us that the delay was due (sic) Court taking time in issuing the require challan. In this view, no question of non (sic)iance with the provisions of R. 85, or (sic) arises.

7. The next question centres round the (sic)ions of R. 200 of the Civil Rules of (sic)ce and it relates to the poundage. Under (sic)le the decree-holder-purchaser shall pay amount chargeable for poundage so soon (sic) is declared to be the purchaser. The does not impose any penalty, if default is (sic)tted in that regard.

Poundage has been (sic)d in Parvati Ammal v. Govindaswami 2 Mad LW 861 at p. 865: (AIR 1916 290 (2) at p. 292) (C), thus:

Poundage is the fee which is levied in (sic)d by the Sheriff as remuneration for his (sic). In this country, as the officers of the (sic) conducting the sales are paid a fixed (sic) a certain percentage of the purchase (sic) is taken for purchasing stamps. In the fee is a charge paid by the decree for the services he obtains from the (sic). In England as well as in this country, (sic)e is taken out of the sale proceeds.

No rule of O. 21 lays down that the decree-holder shall deposit any amount towards poundage within a prescribed time. That is governed by R. 200. of the Civil Rules of Practice. In the case of purchasers other than decree-holders who are given previous permission to bid, the person appointed to sell the property purchases court-fee stamps to the amount of the poundage, if any, payable on the sale.

In the case of a decree-holder-purchaser, who is allowed to set off the purchase money against any sum due to him, the amount chargeable towards poundage shall be paid in Court. Though the words "shall pay" are used in the rule, we do not think that the rule-making authority intended to make it mandatory. Where it is intended that a rule should be mandatory, as in the case of O. 21, R. 84, it is provided that, in default of such payment, the property shall be re-sold.

But, to a default made under R. 200 of the Civil Rules of Practice, no such grave consequences are attached. That apart, R. 205 enables the Court to make such orders as it thinks fit in respect of a matter where the applicant has failed to comply with any of the rules. The words "as it thinks fit" are comprehensive enough to take in an order by the Court excusing the delay in depositing the poundage under certain circumstances. We cannot, therefore, hold that the non-deposit of the amount of the poundage within the time prescribed invalidates the sale itself. It was an irregularity and it has not been established that the petitioner has in any way been prejudiced by the payment having been made at a later stage.

8. In the result, though for different reasons, we agree with the conclusion arrived at by the lower Court, this Civil Revision Petition fails and is dismissed with costs.