**(2014) 09 KAR CK 0195**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 21315/2013 (CS-RES)

Master Mohamed Moin Sadiq APPELLANT

Vs

Amanath Co-Operative Bank Ltd. RESPONDENT

**Date of Decision :** 22-09-2014

**Acts Referred:**

**Citation :** (2014) 6 KarLJ 475 : (2015) 1 KCCR 187

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** Jayakumar S. Patil, Sr. Counsel for Devi Prasad Shetty, Advocate for the Appellant; R. Kothwal, Adv., Laxmesh, Advocate and S. Susheela, AGA, Advocate for the Respondent

## Judgement

B.S. Patil, J.—This is the second time petitioner is approaching this Court challenging the sale proclamation in respect of property bearing No. 53/1 (Old No. 53) situated at Muniswamappa Road, Munireddy Palya, Bangalore.

2. On an earlier occasion, the property had been brought for sale by way of public auction to recover the dues payable under the award dated 15.04.2009 passed in dispute No. JRB/UBF/1442/2004-05. The writ petition filed by the petitioner in W.P. No. 21333/2010 was dismissed on 16.03.2012 observing that the petitioner had been granted an interim order of stay and the date of auction had been over and therefore, the petition had become infructuous. This order was challenged in W.A. No. 1680/2012. By order dated 20.06.2012, Division Bench of this Court disposed of the Writ Appeal observing as under:

"On the last date of hearing, we had recorded the statement of learned Senior Counsel for the appellant to the effect that appropriate legal proceedings would be initiated by the appellant in the interregnum between that date and today. Learned counsel for the appellant states that appellant has filed the representation/petition before the Assistant Registrar of Co-operative Societies and Recovery Officer. In view of this action, the present appeal does not survive for further consideration. Learned counsel for the appellant seeks leave to withdraw the appeal with liberty to pursue the remedies as are available to him in law. Ordered accordingly."

3. Representation filed by the petitioner before the Assistant Registrar of Co-operative Societies and the Recovery Officer, pursuant whereof writ appeal was disposed of as withdrawn, is produced at Annexure-M. In Annexure-M representation filed on 18.06.2012, petitioner specifically contended that the schedule property was not the subject matter of award dated 05.04.2009 nor it belonged to the judgment debtor Sri H.V. Abdul Wahab; Sri H.V. Abdul Wahab did not leave behind the schedule property which could be categorized as his estate, as such, there was a legal bar for attaching the schedule property which absolutely belonged to the objector. He also contended that in the absence of any show cause notice and in the absence of any opportunity of being heard provided to the objector, proposed attachment of the schedule property itself was bad in law. Petitioner further contended that under Rule 45 of the Karnataka Co-operative Societies Rules, legal representatives of the judgment debtor would be liable only to the extent of the property of the deceased which had been received by the legal representatives. He also contended that provisions pertaining to the attachment of properties under the Co-operative Societies Act and the Rules being akin to the provisions of the Code of Civil Procedure in this regard, the Assistant Registrar did not follow the procedure before attaching the property belonging to the petitioner.

4. Though this objection was filed on 18.06.2012, the Assistant Registrar/Sale Officer without considering the objections filed has issued another sale proclamation vide Annexure-N on 20.04.2013 fixing the date of auction as 30.05.2013.

5. I have heard the learned Senior counsel for the petitioner, learned counsel appearing for the respondent-Bank and the learned Additional Government Advocate.

6. Statement of objections have been filed by the respondent-Bank. It is their contention that in view of the mortgage by deposit of title deeds executed by the father of the petitioner in favour of the Bank on 21.03.1994, the property is liable to be proceeded against even in respect of the dues payable by the grand father of the petitioner.

7. There is nothing in the statement objections to indicate, that father of the petitioner has executed the mortgage deed or any other document subjecting the property owned by him/his father to the obligation to discharge the dues payable by the grand father of the petitioner.

8. Rule 45 of the Karnataka C-operative Societies Rules, 1960 reads as under:

"Where a judgment debtor dies before the decree has been fully satisfied, and application under sub-rule (1) of Rule 34 may be made or continued against the legal representative of the deceased and thereupon all the provisions of this chapter shall, save as otherwise provided in this rule apply as if such legal representative were the judgment debtor.

Provided that a show cause notice shall be issued to such legal representative and his objections heard, before execution is proceeded against him.

Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of and for the purpose of ascertaining such liability, the Recovery Officer executing the decree may of his own motion or on the application of the decree holder compel such legal representative to produce such accounts as he thinks fit".

9. It is thus clear from the above that wherever the decree is sought to be executed against the legal representative of the judgment debtor, he could be liable only to the extent the property of the deceased comes to his hands and has not been duly disposed of and only to that extent, the recovery officer executing the decree is conferred with a right to compel such legal representative to produce such accounts as he thinks fit.

10. Therefore, it is apparent from the above Rule that unless it is established that the property in question belonged to the grand father and the petitioner or his father succeeded to the same, the bank cannot proceed against that said property. It is also apparent that unless it is shown that the mortgage deed executed on 21.3.1994 by depositing the title deeds authorizes the Bank to proceed against this property for recovery of the loan in question due from the grand father of the petitioner, the sale officer cannot proceed against this property. Although specific contentions have been taken in this regard by the petitioner, the sale officer has not examined the same. He has not discharged his statutory duties in the matter. He has blindly brought the property for sale ignoring Annexure-M representation which was filed before him by the petitioner.

11. Mere fact that father of the petitioner executed a gift deed in favour of the petitioner before the loan advanced to the grand father was fully discharged cannot be a ground to bring the property of the petitioner for sale. As long as the housing loan, which the father of the petitioner has availed by mortgaging the subject property had nothing to do with the loan availed by the grand father of the petitioner, proceedings cannot be initiated to recover the loan owed by the grand father by bringing this property for sale. There is no answer to any of these things in the statement of objections filed by the bank. There is no application of mind nor is there any consideration of the objections filed by the petitioner. Hence, the auction sale proclamation Annexure-N deserves to be set aside.

12. Accordingly this writ petition is allowed. Annexure-N is set aside. If at all the Sale Officer/Assistant Registrar intends to proceed against the property of the petitioner, then, they have to first consider the representation submitted by the petitioner vide Annexure-M, give an opportunity of personal hearing and pass

 

appropriate orders strictly in accordance with the provisions of the Karnataka Co-operative Societies Act and the Rules, keeping in mind the observations made in this writ petition. Ordered accordingly.

 