(2025) 02 KL CK 1290

In the High Court Of Kerala

Case No : First Appeal From Orders No. 93 Of 2023

Meenachil Rubber Marketing And Processing Co Operative Society Ltd No.K-118	APPELLANT
Vs	
Kadaplamattom Service Co Operative Bank Ltd	RESPONDENT

Date of Decision : 21-02-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 100, Order 21 Rule 66, Order 21 Rule 67, Order 21 Rule 90

Kerala Co Operative Societites Act, 1969 — Section 68, 69, 75, 76(a), 83, 85, 86

Citation : (2025) 02 KL CK 1290

Hon'ble Judges : Sathish Ninan, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : Shaji Thomas, Mohan Pulikkal, Jen Jaison, Panicker V.P.K., Sajeevu Mathew

Final Decision : Allowed

Judgement

Sathish Ninan, J.

1. These First Appeals from Orders arise from the dismissal of applications to set aside sale, filed under Order XXI Rule 90 of the Code of Civil Procedure (CPC).

2. FAO 93/2023 arises from EA 5/2022, which was filed by the judgment debtor; FAO 25/2024 arises from EA 7/2022, filed by a third party; and FAO 26/2024 arises from EA 6/2022, also filed by a third party. The respective petitioners are in appeal.

3. The property involved in these proceedings is 4 acres and 14 cents, (hereinafter referred to as "the property"). The first respondent in all these proceedings is the decree holder-auction purchaser.

4. The decree holders secured an award against the judgment debtor in ARC 1030/2016 filed under Section 69 of the Kerala Co-operative Societies Act. The award was passed on 30.03.2019 for Rs. 2,33,42,751/-.

5. The award holder/decree holder filed EP 28/2019 before the Subordinate Judge's Court, Pala, seeking execution of the award as enabled under Section 76(a) of the Act. In Execution, the property was purchased by the decree-holder on 05.07.2022.

6. On 01.09.2022, the respective appellants filed applications under Order XXI Rule 90 CPC seeking to set aside the sale. The grounds alleged were: -

(a) Lack of jurisdiction of the execution court for non-compliance with the requirements under Section 76(a) and Rule 72 of the Co-operative Societies Act and Rules (hereinafter referred to as “Act” and “Rules”).

(b) Non-compliance with the prescriptions under Order XXI Rule 67 CPC.

(c) Non-application of mind by the court in fixing the upset price.

The execution court overruled the objections and dismissed the applications.

7. We have heard Sri.Abraham George Jacob, the learned counsel for the appellant, Sri.Shaji Thomas, the learned counsel for the first respondent and Sri.V.P.K.Panicker, the learned counsel for the second respondent. On our request, Sri.P.P.Thajudheen, the learned special Government Pleader (Co-operative Societies) also addressed us.

8. Elaborating on the three grounds of challenge against the execution sale, the learned counsel for the appellant submits that Section 76(a) and Rule 72 (2) of the Act and Rules mandates obtaining of a certificate from the Registrar to enable the award holder to execute the award before the Civil Court. The certificate is issued in Form 12 to Appendix II to the Rules. It is the issuance of such a certificate that makes the award a deemed decree, making it liable to execution in the civil court. In the case at hand, such certificate in Form 12 was not obtained and produced by the award holder before the execution court. Hence the execution court lacked inherent jurisdiction to execute the award. Therefore, the entire sale proceedings are without jurisdiction and void. Referring to Order XXI Rule 67 CPC, the learned counsel for the appellant submits that paper publication of the sale proclamation as mandated in the Rules was not effected. This amounts to material irregularity in the publishing and conduct of sale. This has resulted in the sale of the property for a much lower value than it is to fetch. This has resulted in substantial injury.

9. It is next contended by the appellant that though the property contained a factory building and other improvements, they were not valued and shown in the proclamation. This amounts to violation of the requirements under Order XXI Rule 66 CPC and material irregularity in the publishing and conduct of the sale affecting the sale price and thus resulting in substantial injury.

10. The learned counsel for the award holder/ auction purchaser would on the other hand submit that the contention with regard to lack of jurisdiction is not one that is available in an application under Order XXI Rule 90 CPC. He has also

pointed out that a Form-12 certificate from the Registrar was obtained pending the proceedings to set aside the sale and was produced before the execution court. Thus, the defect if any, has been cured. Referring to Order XXI Rule 67 CPC, the learned counsel submitted that, as is evident from the Rule, paper publication is not mandatory but needs to be ordered only when the court forms such an opinion. With regard to the non-mentioning of the factory and improvements in the proclamation, the learned counsel submits that a report of the valuer/engineer was obtained prior to the setting of the proclamation, and the said value is also included in the upset price fixed. Therefore, there is no force in the contention of the appellants. He further points out that there was no objection to the draft proclamation. He prays for the dismissal of the appeals.

11. Objection with regard to inherent lack of jurisdiction is available to a party at any stage of a proceeding. Unlike an objection to a territorial or pecuniary jurisdiction, inherent lack of jurisdiction renders the proceedings before the forum void. Inherent lack of jurisdiction renders the proceedings void is too well settled. [Chandrika Misir v. Bhaiyalal 1973 (2) SCC 474, Budhia Swain & Ors. v. Gopinath Deb & Ors. 1999 (4) SCC 396, H.V.Nirmala v. Karnataka State Financial Corporation & Ors.2008 (7) SCC 639, Shyam Madan Mohan Ruia & Ors. v. Messer Holdings Ltd. & Ors. 2020 (5) SCC 252]. It is open for a party to point out at any stage that a court lacked inherent jurisdiction. Even acquiescence or consent cannot confer jurisdiction if there is inherent lack of jurisdiction [See United Commercial Bank Ltd and Ors v. Their Workmen (AIR 1951 SC 230), Bahrein Petroleum Co. Ltd v. P.J Pappu and Anr (AIR 1966 SC 634), Smt Nai Bahu v. Lala Ramnarayan and Ors (AIR 1978 SC 22)]. A plea of inherent lack of jurisdiction could be taken at any stage of the proceedings or even in collateral proceedings [See Kiran Singh and Ors v. Chaman Paswan and Ors (AIR 1954 SC 340), Sarup Singh and Ors v. Union of India and Ors (AIR 2011 SC 514)]. Merely because the applications were filed under Order XXI Rule 90 CPC does not prevent the party from pointing out to the court that the entire sale proceedings were void for inherent lack of jurisdiction. Incidentally it is also to be noticed that, the petitioners in EA Nos.6/22 and 7/22 were not parties to the proceedings enabling them to raise such a contention.

12. Now we proceed to consider the contention that, the failure to obtain Form-12 certificate from the Registrar renders the execution proceedings void for inherent lack of jurisdiction.

13. Section 100 of the Act bars the jurisdiction of civil courts in respect of any matter for which provision is made under the Act. The Section reads thus :-

“100. Bar of jurisdiction of courts: - No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act.”

Section 69 of the Act provides a mechanism for settlement of disputes. The Act also provides a mechanism for execution/enforcement of the award. Therefore, unless the Act specifically jurisdiction, the civil court lacks jurisdiction.

14. Section 76(a) of the Act and Rule 72(1) and (2) of the Rules, read thus :-

“76. Execution of orders, etc.: Every order made under sub-section

(2) of Section 68 or under Section 75 every decision or award made under Section 70, every order made by the liquidator under Section 73 and every order made by the Tribunal under Section 82, Section 84, Section 85 or Section 86 and every order made under Section 83 shall, if not carried out—

(a) on a certificate signed by the Registrar or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.”

“72. Issue of certificate under Section 76: (1) The holder of any decision, award or order referred to in Section 76 of the Act shall, if the said decision, award or order is not carried out, apply to the Registrar for the execution thereof under clause (c) of Section 76 or for a certificate to be issued under clause (a) or (b) of the said section :

(2) The Registrar may, on receipt of an application under clause (1) above for the issue of a certificate, issue the certificate, only on his satisfying that no such certificate has been issued to the party to enable him to apply for execution either to the Collector or a civil court of competent jurisdiction, previously.

Section 76(a) of the Act enables an award under Section 70 of the Act to be executed by a civil court. But for such an enabling provision, the civil court would not have jurisdiction to execute the award. Section 76(a) provides that on a certificate issued by the Registrar, the award is deemed to be the decree of a civil court, liable to execution by a civil court. By a statutory fiction, an award is deemed to be a decree of a civil court when the Registrar issues a certificate under Rule 72 of the Rules. It is upon the issuance of the certificate by a Registrar that the fiction operates, and the award is deemed to be a decree of the civil court. Till the issuance of the certificate, an award remains as such, and the civil court cannot execute the award. The issuance of such a certificate is a pre-requisite to vest in the award the status of a deemed decree. In T.C.Balakrishnan Nair v. Secretary, Naruvammoodu Bank (CRPNo.656 of 2009), a learned single judge of this Court held,

“On a plain reading of the provision of the Act and Rules it is abundantly clear that certification by the Registrar is a sine qua non for the order or award to get the fictional status of a decree.”

On the discussions made by us supra, we concur with the view. Thus, we hold that the issuance of a certificate by the Registrar in terms of Rule 72 is mandatory for an award to partake the status of a deemed decree liable to be executed before a civil court. Unless such a certificate is issued, the civil court lacks jurisdiction to execute the award.

15. In the present case, admittedly the certificate of the Registrar was not

obtained when the execution petition was filed or even when the sale was held on 05.07.2022. Therefore, there was no decree/deemed decree liable to be executed by the civil court. The award-holder was merely seeking for execution of an award under the Act. There was inherent lack of jurisdiction with the civil court to execute the award. It is without noticing the same that the civil court proceeded with the execution.

16. While it is true that pending the applications to set aside the sale the award holder had obtained the certificate under Rule 72 and produced the same before the execution court, it could not save the proceedings already held by the Court since there was inherent lack of jurisdiction. The obtaining of the certificate subsequently could not cure the defect of lack of jurisdiction, retrospectively. Therefore, the obtaining and production of a certificate after the sale in the present case cannot validate the proceedings till then. We are unable to agree with the execution court, which held to the contrary.

17. On the above discussions we hold that, consequent on the non-obtaining of the certificate of the Registrar under Rule 72, the civil court lacked inherent jurisdiction to execute the award in question and the execution sale held in the instant case is null and void. It is declared accordingly.

18. It is argued on behalf of the appellants that there has been non-compliance with the prescription under Order XXI Rule 67 CPC which mandates paper publication of the proclamation of sale. While it is true that the proclamation of the sale was not published in the newspaper, such publication is necessary only in cases where the court so directs. Rules 67(1) and (2) being relevant are extracted hereunder :-

“67. Mode of publishing the proclamation of sale.-(1) Every proclamation shall be published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.”

In terms of Rule 67(1) the proclamation is to be published in the manner prescribed in Rule 54(2). Rule 54(2) provides for proclamation at the property, court house etc. As per Rule 67(2), it is only when the court so directs that such a proclamation needs to be published in the newspaper. It is not in dispute that, in the present case, there was no such order. In Saheb Khan v. Mohd. Yousufuddin and Ors (2006 KHC 612), this Court held that paper publication is not the rule but the exception. Hence, the allegation that there has been non-compliance with the requirements under Rule XXI Order 67 CPC is only to be repelled, and we do so.

19. It is next contended by the appellants that, there has been material irregularity in the sale proceedings since the sale proclamation did not mention

the value of the factory building situated in the property. So also, the fixation of the upset price was not proper. The court relied on a fair value notification by the Department of Registration, which was revised and was not in force at the relevant time. This reflects the non-application of mind by the Court, rendering the settlement of the proclamation void. Such fixation of upset price has resulted in substantial injury to the applicants, is the contention.

20. A perusal of the proclamation shows that the Court fixed a total value of ☐ 1,50,00,000/- for the land, the building, and the machinery thereon. For the land, the value was fixed at the rate of ☐ 68,062.50 per Are. A perusal of the sale proclamation reveals that, though it mentioned the factory building and other buildings on the property, separate value of the factory with the machinery is not shown. However, from the details as above, the value of the factory etc., is easily deducible. Therefore, the non-mentioning of the separate value in the proclamation may not be of much significance.

21. Now, coming to the value fixed for the factory and machinery, the total value of the land at the rate of ☐ 68,062.50 per Are is ☐ 1,13,66,220/-. Deducting the same from the total value of ☐ 1,50,00,000/- the value of the building and machinery is seen fixed at ☐ 36,33,780/-. There is no material to find how the court had fixed the value of the factory building and machinery, in the proclamation. The learned counsel for the award holder-auction purchaser contends that the award holder had obtained a valuation report through an approved valuer. A perusal of the said valuation report shows that it was obtained on 27.06.2022, i.e. after the settling of the proclamation on 15.06.2022. Further, as per the report, the value of the buildings in the property, including the factory building, is ☐ 2,14,24,000/-. The value of the factory building alone is ☐ 1,70,84,000/-. Evidently, the value of the buildings shown in the proclamation schedule is too low.

22. So also, coming to the value of the land, as noticed above, the court has fixed the value at ☐ 68,062.50 per Are relying on a fair value notification which was not in force. The applicants have produced the fair value notified by the Registration Department in the year 2010. As per the same, the fair value is ☐ 82,500/- per Are. The total extent of property involved is 4 acres and 14 cents. Therefore, there would be much disparity in the total value of the property.

23. The learned counsel for the award holder would contend that, as is evident from the proclamation, there are subsisting liabilities to the Government amounting to ☐ 1,49,25,000/- and if that is also taken into account the total value would be ☐ 1,50,00,000/- + ☐ 1,49,25,000/- = ☐ 2,99,25,000/- which is at par with the fair value of the year 2010 relied on by the appellants. The said contention has no force since, as noticed above, not only is there a disparity in the land value, but the value of the factory building and machinery, as included in the proclamation, is also too low even going by the valuation report relied on by the award holder.

24. Apart from the award holder, the applicants in EA 6/2022 and EA 7/2022 are also award holders against the very same judgment debtor. As per the awards held by them in ARC Nos.24/2017 and 2923/2017 an amount of ☐ 3,28,20,496/- and ☐ 1,07,28,226/- are due to the respective applicants. Now the award-holder has purchased the property. According to the appellantspetitioners, there are various other creditors for the judgment debtor. Evidently, if a proper sale is conducted there will be competitive bidding. Now the award holder has bid the property for its debt. The substantial injury that has resulted to the applicants consequent on the irregularity in the settling of the proclamation and conducting the sale, need no further material. In Regi George v. Bhaskaran Nair (1998 (2) KLT 640) it was held that when the sale is for an inadequate price the corollary is substantial injury [See also Thankamma v. Leelamma Abraham (2008 (2) KHC 109), Babu John v. A. K. Ramakrishnan and Another (2016 (2) KHC 515)] The material irregularity in the conduct of the sale and the resultant substantial injury are writ large. Therefore, the sale is liable to be set aside. For the reasons stated above, we are unable to concur with the order of the execution court upholding the sale.

25. Though a contention is raised with regard to the locus of the petitioners in EA 6/22 and EA 7/2022 to maintain the application, as is evident from Order XXI Rule 90 CPC, any person entitled to seek for rateable distribution of the assets of the judgment debtor is entitled to maintain the application. In the oral evidence of the applicants, it has been deposed that they hold awards against the judgment debtor, which are under execution. The depositions remain unchallenged. They are entitled to rateable distribution and hence have the locus to maintain the applications. The said ground of challenge is thus rejected.

26. We have already held supra that the execution proceedings which resulted in sale, were without jurisdiction. Hence the execution petition as such is liable to be dismissed. Since the award holder has since obtained a certificate as mandated under Section 76(a) and the Rule 72 of the Act and the Rules, it shall be open for the award holder to initiate fresh proceedings for execution.

Resultantly, the appeals are allowed. The sale held on 05.07.2022 is set aside. The execution petition will stand dismissed, but without prejudice to the rights of the award holder. No costs.

