
(1997) 11 KL CK 0048
In the High Court Of Kerala
Case No : C.R.P. No. 1832/97

Mohankumar

APPELLANT

Vs

Natarajan and Another

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 2, Order 47 Rule 1, 114

Citation : (1998) 1 KLJ 374 : (1998) 4 RCR(Civil) 359

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : K.C. John and K.K. John, for the Appellant;

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—Official Receiver appointed as Receiver in O.S. 24 of 1960 of the Munsiff's Court, Kollam is the revision Petitioner.

2. On the basis of the order dated 10th November 1994 and the clarification order the court appointed the Petitioner as Receiver under Order 40, Rule 1 CPC by Order dated 10th April 1995, with all powers under the provisions of the CPC to take possession of the property in question and to sell the same in public auction and the remuneration of the Receiver is fixed at the rate of 5 per cent of the sale proceeds. On providing the Order the Petitioner took possession of the property on 22nd May 1995 and divided the same into 15 plots giving way to each plot. The mahazar, sketch, etc. of the property was filed before court on 26th May 1995. There was difficulty in evicting the 40th Defendant from the property and the Petitioner had to seek police aid for evicting him from the building. The Petitioner sold the properties in auction after due publication in newspaper(s) and after necessary advertisement by notices and he filed reports in court on 21st June 1997 and 2nd August 1997. While so, the court by Order dated 10th September 1997 directed the Petitioner to show cause why the Order issued on 10th April 1995 fixing the remuneration at the rate of 5 per cent of the

sale proceeds shall not be reviewed. The Petitioner was directed to submit reasons for not reviewing the Order on or before 29th September 1997. The Petitioner submitted his reply on 27th September 1997 stating all relevant circumstances involved in the matter. It was specifically stated that the Order appointing the Official Receiver in respect of the plaint schedule properties was passed on 10th November 1994 in I.A. 613/93 and the remuneration of the Receiver was fixed therein and the Order dated 10th April 1995 served on the Petitioner fixing the remuneration is only in consonance with the previous Order passed under Order 40, Rule 2 CPC and which has been confirmed by this Court in C.R.P. No. 944/95. It was also stated that the Order passed in I.A. 613/93 has merged with the Order of this Court in C.R.P. 944/95 and that the Munsiff has no jurisdiction to review the Order in I.A. 613/93. Learned Munsiff without considering the various grounds taken in the reply and without hearing the Petitioner, passed the impugned Order on 7th October 1997 holding that the Order of his predecessor dated 10th April 1995 fixing the remuneration of the Official Receiver at the rate of 5 per cent of the sale proceeds was without assessing the quantum of work done by the Official Receiver and that there is an error apparent on the face of the records in fixing the remuneration and hence the Order dated 10th April 1995 is reviewed and that there is no justification in fixing the remuneration on percentage basis. The Court tentatively fixed the remuneration of the Receiver at Rs. 30,000 and allowed to appropriate Rs. 30,000 towards remuneration and Rs. 20,000 towards expenses incurred by the Official Receiver as per his statement which will be approved by the court only after auditing the vouchers. The Petitioner was further directed to deposit the entire sale proceeds of plot Nos. 1 to 15 after deducting the amount of Rs. 50,000 on or before 18th October 1997. Being aggrieved by the Order of the Munsiff dated 7th October 1997 refixing the remuneration, this C.R.P. has been filed for setting aside the said Order. When the petition came up for admission, urgent notice was issued to the Respondents. Endorsement on the file shows that service is complete, but there is no appearance for the Respondents.

3. Heard Shri K.C. John, learned Senior Counsel appearing for the revision Petitioner. Having heard learned Counsel, I am satisfied that the order under challenge cannot be legally sustained for more than one reason. It is not disputed that the Petitioner was appointed as the Receiver in O.S. 24/60 under Order 40, Rule 1 CPC by order dated 10th November 1994 in I.A. 613/93. Later, his remuneration was fixed at the rate of 5 per cent of the total sale proceeds by Order dated 10th April 1995 purportedly under Order 40, Rule 2 Code of Civil Procedure. In the absence of any challenge to the above Orders, the said Orders have become final and operates as a bar to initiate suo motu proceedings by court to review the Order and refix the remuneration. Review under Order 47, Rule 1 CPC contemplates an application for an aggrieved party against a Decree or Order. The court cannot review its own Order or Decree suo motu unless an application for review is filed by an aggrieved party as contemplated u/s 114 CPC and the court must be satisfied that the conditions mentioned in Order 47, Rule 1

CPC exists to entertain the review. In the aforesaid view, the order under challenge reviewing the Order dated 10th April 1995 is without jurisdiction. I am also satisfied that the court acted illegally and with material irregularity in holding that there is error apparent on the face of the records in fixing the remuneration of the Petitioner at the rate of 5 per cent of the sale proceeds and initiating suo motu review proceedings. The scope, right, competency and jurisdiction of the court in the matter of review was not considered or realised by it in issuing the show cause notice. The circumstance that the Order fixing the remuneration was passed by a competent court having jurisdiction after considering all relevant aspects of the case and after hearing the parties and that Order has not been questioned by any of the parties and that has become final has been lost sight of. By the change of opinion of the successor in office the original order could not be reviewed on the specious ground that there is error apparent on the face of the records. The order of review by the successor in office is therefore without jurisdiction, erroneous, arbitrary and unjust. That apart, I am satisfied that the impugned order is violative of the principles of natural justice. Even though the Petitioner had filed a reply, the case was not posted for hearing and the Petitioner was not heard and no opportunity was given to the Petitioner to urge his contention.

For all the above reasons, the Order under challenge in O.S. No. 24/60 dated 7th October 1997 is hereby set aside and the C.R.P. is allowed as prayed for.