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(1973) 07 GAU CK 0005

In the Gauhati High Court

Case No : Civil Revision No. 18 of 1971

Nirode Ranjan Dey — APPELLANT

Vs

Union of India (UOI) and others — RESPONDENT

Date of Decision : 12-07-1973

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 38, Order 21 Rule 54, Order 21 Rule 58, Order 21 Rule 66, Order 21 Rule 89

Citation : AIR 1974 Guw 14

Hon'ble Judges : P.K. Goswami, C.J

Bench : Single Bench

Advocate : J.K. Roy, for the Appellant; R. Ghosh, Govt. Advocate. A.M. Lodh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Goswami, C.J.—This Civil Revision is directed against an order of the learned Munsiff, Kamalpur, entertaining an objection of the opposite party under Order 21. Rule 58, Civil Procedure Code, with regard to attachment of certain property made in the course of execution in Execution Case No. 4 of 1969 arising out of Money Suit No. 2 of 1968.

2. The petitioner before this Court is the decree-holder. In the course of the aforesaid execution proceeding certain immovable property was attached on 20th March, 1969 and auction sale took place on 15th September, 1970 and it was posted for confirmation of sale to 30th October, 1970. On that day the order-sheet shows that a copy of an application addressed by the Executive Engineer to the District Magistrate was received by the Munsiff by post and he fixed 21-11-1970 for orders, although it was hardly necessary for him to take notice of the same in the absence of a Proper application. However, on the 21st November, 1970, the Union of India filed an application before the Court under Order 21, Rule 58, objecting to the attachment of the said property following which the same had been sold. The ground given apparently was that in an arbitration

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proceeding between the judgment-debtor and the Union of India status quo was ordered to be maintained by the learned Additional Subordinate Judge. The learned Munsiff, therefore, felt helpless and stayed further proceedings and did not even intend to adjudicate upon the claim of the Union of India so far made in the application under Order 21, Rule 58. C.P.C.

3. The short point that arises for consideration in this case is whether after the sale of the attached property had taken place the application under Order 21, Rule 58. C.P.C. is maintainable.

4. Mr. J. K. Roy. learned counsel for the petitioner, submits that the executing Court had no jurisdiction to entertain such an application after the sale had taken place on 15th September, 1970. On the other hand. Mr. R. Ghosh, learned Government Advocate, representing the Union of India, submits that there is no error of jurisdiction in entertaining the application, although he very frankly submits that the Court below need not have staved its hands but should have adjudicated the matter.

5. Mr. Ghosh has Pointed out that there has been a conflict of judicial opinion on this Point in several High Courts. The best case, according to him in his favour which he placed before me is a Single Bench decision of the Rajasthan High Court reported in Chhoga Lal Vs. Khet Mal and Another, . On the other hand, Mr. Roy has drawn my attention to a decision of the Calcutta High Court reported in AIR 1937 Cal 300 Sasthi Charan v. Gopal Chandra I have anxiously considered the two view points urged before me.

6. We may now read Order 21, Rule 58. which may be quoted:

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a Party to the suit;

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection

7. Immovable property in the course of execution is attached under Order 21, Rule 54. C P C Attachment under that rule is made by an order prohibiting the judgment-debtor from transferring or charging the property in any way and all Persons from taking any benefit from such transfer or charge. There is a regular procedure by which after attachment sale has to take place. For example, inter alia, under Order 21, Rule 66. C.P.C. proclamation is made of sale by public auction of the property attached. Various time-limits are specified to effect auction sales in the course of execution. After the sale, a stage is reached for

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confirmation. There again. confirmation does not take place if there are applications meanwhile made either under Order 21- Rules 89, 90 or 91, C.P.C. If no application is made under those rules or if made, after disposal of such application, orders can be passed under Order 21, Rule 92. C.P.C. confirming the sale and making it absolute.

8. It is, however, clear that there is no prescribed Period of limitation for filing an application under Order 21 Rule 58. But reading the provision of rule as a whole, limitation of some sort is ingrained therein. The objection is preferred after attachment and to the attachment before the property is put to sale. In the different rules under Order 21 after Rule 58 the word "sale" appears. That "sale" has no relation to the confirmation of sale. Indeed sale that is sought to be set aside under Rules 89 90 or 91 is before confirmation of the sale. Order 21, Rule 38 provides only for investigation of claims and objections to the attachment of property. That being the position such an objection cannot be allowed to be taken when the stage of attachment passes and the Property is sold in execution. The fact that attachment may not cease in law is of no relevance in the context of the claim under Order 21. Rule 58. Lodging of objection under Order 21. Rule 58 in terms of the provisions cannot be postponed to a stage after the sale. Under sub-rule (21 of Order 21. Rule 58. the Court ordering the sale may postpone it pending investigation of the claim or objection. That also goes to show a stage anterior to the stage of actual sale.

9. For the foregoing reasons. I am therefore with respect unable to subscribe to the view of the Rajasthan High Court in the decision reported in Chhoga Lal Vs. Khet Mal and Another, . With respect. I am in agreement with the view of the Calcutta High Court in the matter. My attention has not been drawn to any decision of our High Court on this point.

10. In the result, the application under Order 21, Rule 58, C.P.C. could not be entertained by the learned Munsiff and the application stands rejected. The petition is allowed with costs assessed at Rs. 100/- to be paid by the Union of India.

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