(1999) 01 KAR CK 0045

In the Karnataka High Court

Case No : Civil Revision Petition No. 3528 of 1998 connected with Civil Revision Petition No. 3237 of 1998

Smt. Rosali V. APPELLANT

Vs

M/s. Nellai Small Match Producers Service Industrial Co-Operative Society Limited, Tirunelveli, Tamil Nadu and Others RESPONDENT

Date of Decision : 08-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 86, 115

Constitution of India, 1950 — Article 235

Citation : AIR 1999 Kar 167 : (1999) 3 KarLJ 141

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri C.M. Desai and Sri T.S. Amar Kumar, for the Appellant; Sri S. Tarakaram, for Sri M. Shivaprakash, for the Respondent

Judgement

1. These two revisions u/s 115 of the CPC arise from an order dated 27-9-1996 passed by the learned Additional City Civil Judge, Bangalore which order reads as under:

"Dhr. KAB.

Jdr. SGK.

To hear Dhr. and to produce copy of the order in RFA.

Sri MRG. for Dhr. submits that the sale is void in view of the confirmation before 30 days and other objections. Hence sale is set aside for these reasons.

Sri MRG prays for time to take steps. To hear and steps by 11-10-1996".

2. These revisions have been filed on 12-10-1998. It is barred by limitation by more than 2 years. Office has reported both revisions to be barred by limitation. But, it may be mentioned that along with the revision petition, the petitioners

have filed an application for condonation of delay. I have heard the learned Counsel for both parties both on the question of limitation as well as on merits. On behalf of the applicant, it has been contended that the revisionist, before the Court had no knowledge of the order and had no notice of the date on which the order was passed nor of the order itself. When they came to know about it later on, they have filed a revision application. On the merits of the case, I have heard the learned Counsel for both sides and I really find that the revisions have got no life. So there is no need to go on the question of limitation only.

3. In these cases, the sale was held on 26-10-1988. An order of confirmation was passed on 11-11-1988. The sale certificate said to have been issued on 17-11-1988 and it was later on changed in the name of respondent 4 that is on 16-1-1990. The sale has been set aside on the ground that it was null and void. No doubt, the law prescribes the period within which the application for setting aside the sale can be made earlier and it was 30 days but later on it was amended by an Amendment Act of 104 of 1976. It was provided 60 days.

4. The learned Counsel for the revision petitioners as such contended that even if the sale was void or confirmation was void, an application should have been made to set aside the sale and the Court could not set it aside on its own without an application. An application may be oral or may be in writing.

5. The learned Counsel for the parties have taken me through the order sheet filed by the revision petitioner as well. Perusal of the order sheet reveals that the auction was held on 26-10-1988 and the bid was accepted on that day. But 25% of the amount was not deposited on that very day. Instead, on the request of the bidder, he was allowed to deposit 25% of the amount next day that is a day after the 26-10-1988. The remaining amount was deposited on 11-11-1988 that is on 16th day from the date of conduct of sale and acceptance of the bid. The sale in the present case as such in my opinion was void.

6. In view of the law laid down by their Lordships of the Supreme Court in the context of Order 21, Rules 84, 85 and 86 in the case of Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, , where their Lordships observed that:

"Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25% of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all".

7. It is also to be taken note of that their Lordships have observed as the Division Bench decision of Lahore High Court in the case of A.R. Devar v Jhinda Ram, have observed that the Court has no jurisdiction to extend the time for payment of purchase-money under Rule 85 and must order a resale under Rule 86. In this view of the matter, as the facts of the case also disclose that neither compliance has been made with the requirement of the Rule 84 which requires that bidder/declared purchaser shall pay immediately after such declaration a deposit of 25% of the amount of the purchase-money has to be made to the officer or other person conducting the sale. If any default, the property is to be resold. It means, if 1/4th amount is not deposited immediately after the bid is accepted, then no sale in the eye of law can be said to have taken place in favour of the bidder. Even if the person deposits the amount of 25% and he fails to deposit the remaining amount on the 15th day from the date of sale being closed, then also as per Rule 86, the property should be resold. Thus, this being the position, the sale which has been relied by the two revision petitioners being null and void did not confer any right to the revision petitioner or subsequent purchaser that is the other revision petitioner. The learned Counsel for the revision petitioners contend that the sale once having been confirmed by the Execution Court, it could not be set aside and it was not nullity. I am unable to accept this contention. If the original order or original auction is void, then the confirmation thereof will not make the auction valid. When I so observe, I find support from the observation of their Lordships of the Supreme Court in the case of Baradakanta Mishra Vs. High Court of Orissa and Another, . Their Lordships have observed that.--

"The High Court with the power and control vested under Article 235 could hold disciplinary proceedings against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishments, viz., reduction in rank is exercisable by the Governor who is the appointing authority. The order passed by the High Court on 8th December, 1972 reducing the appellant in rank is unconstitutional and is quashed.

The two orders of dismissal dated 3rd December, 1973 are based on the order of 8th December, 1972. The substratum of the orders of dismissal being unconstitutional, the orders of dismissal cannot have any legal force. Further, the contention of the High Court that the orders of dismissal passed by the High Court merged in the orders passed by the Governor cannot be accepted -If the order of the initial authority is void an order of the Appellate Authority cannot make it valid. The order of the Governor used the word "confirm". The appellant filed appeals to the Government. The appeals were dismissed. The confirmation by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void".

8. This very principle which has been laid down by their Lordships of the Supreme Court that confirmation by the Governor cannot have any legal effect. The principle that which is valid can he confirmed and not that which is void, is as such applicable to the interpretation of Rule 92, and the effect of confirmation under Rule 92, being assessed. When the sale itself had been null and void as mentioned above, the confirmation under Rule 92 even it would have been done after expiry of 60 days, would not have validity. The sale is null and void in this particular case is beyond dispute. The confirmation was done before the expiry of 30 days or 60 days whatever it may be which is given to the party for moving under Rules 89 and 90 for seeking to set aside the sale under law of limitation is without jurisdiction as during or before the expiry of that period and the authority "or Court could not confirm the sale. The auction sale itself being void, the confirmation of sale also being void, the mistake having been brought to the notice of the Court, it is the inherent jurisdiction of the Court to rectify such mistake. No party is to be made to suffer because of the mistake of the Court. It was open to the Court to exercise its powers to rectify the mistake. But, no doubt, if the money has been deposited, later on, it had to be refunded to the auction purchaser.

Thus, in my opinion, the order impugned cannot be said to be suffering from the jurisdictional error or causing any injuries to the parties. Thus, in my considered view, these revision petitions have got no substance on merits and accordingly these petitions have been dismissed.

