

(1995) 03 KAR CK 0008
In the Karnataka High Court
Case No : C.R.P. No. 2080 of 1994

Sripal

APPELLANT

Vs

Adappa Babu Mogadum

RESPONDENT

Date of Decision : 17-03-1995

Acts Referred:

Citation : (1995) ILR (Kar) 1464 : (1995) 2 KarLJ 216

Hon'ble Judges : Kumar Rajaratnam, J

Bench : Single Bench

Advocate : Basavaprabhu S. Patil, for the Appellant; Ravi S. Balikai, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, J.—This Civil Revision Petition will have to be allowed on the basis of the law laid down by the Supreme Court reported in the case of P.K. UNNI v. NIRMALA INDUSTRIES AND ORS., wherein the Supreme Court has held as follows:-

"There is no inconsistency between the two sets of provisions prescribing different periods of limitation. Such inconsistency can arise only if obedience of one provision will result in disobedience of the other. While Rule 92(2) requires a deposit to be made within 30 days from the date of sale, Article 127 requires an application contemplated under Rule 89 to be made within 60 days from the date of sale. The deposit must necessarily precede the application for no application under Rule 89 can be made except on depositing the amount in Court. Further, the words of the statutes being clear, explicit and unambiguous, there is no scope to have recourse to external aid for their construction".

2. The facts very briefly are the petitioner is the auction purchaser and the decree-holder of the suit schedule property. The date of sale was 1.10.1988. It is a common ground that some money was lying in deposit in Court and there was a balance of Rs. 7,500/- owing to the decree-holder. Unfortunately for the

respondent, an application was made for setting aside the sale on 28.11.1988 and which admittedly, was within time. However, the application for setting aside the sale was made without prior deposit of the money owing to the decree-holder and it is seen from the order of the learned Principal Munsiff, Chikodi at Para-12 that the money was paid one day after the application for setting aside the sale, that is on 29.11.1988. But the learned Counsel for the respondent submits that the money was paid on 28.11.1988 itself alongwith the application for setting aside the sale. This is denied by the learned Counsel for the petitioner. Be that as it may, it is not in dispute that the amount was not deposited in Court within 30 days and there is a delay of 28 days. While the application for setting aside the sale can undoubtedly be made within 60 days, the payment of the balance consideration ought to have been made within 30 days and admittedly, it is hopelessly barred by limitation. In that view of the matter and also relying on the Judgment of the Supreme Court in P.K. Unni Vs. Nirmala Industries and others [OVERRULED], cited above, this Revision Petition is allowed. Accordingly, this Civil Revision Petition is allowed. The order passed by the learned Principal Munsiff at Chikodi in Misc case No. 35/1989 is set aside. The learned Principal Munsiff at Chikodi is directed to proceed with the execution in accordance with law. No order as to costs.