(2002) 09 KL CK 0012

In the High Court Of Kerala

Case No : C.R.P. No. 2383 of 2001

The Federal Bank Ltd. APPELLANT

Vs

K. Sreedharan and Others RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 66(2), Order 21 Rule 72(2), Order 21 Rule 72(3), Order 21 Rule 72A

Citation : AIR 2003 Ker 199 : (2003) 1 BC 301 : (2003) 115 CompCas 55

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : N.P. Samuel and V.R. Rajithkumar, for the Appellant; C.V. Vasudevan, for the Respondent

Judgement

K.A. Mohamed Shafi, J.—This C.R.P. is preferred by the decree-holder/Plaintiff challenging the order in E.A. 28 of 2001 in E. P. 1/99 in O.S. 10/1988 dated 18th July 2001 of the Sub Court, Kottarakkara, That application was filed by the revision Petitioner to reduce the reserve price fixed for the sale of property to Rs. 82,489.

2. The execution court dismissed that application. The revision Petitioner-Bank obtained a Decree for realisation of money against the Respondents. They filed E.P. 74/92 stating that the amount due under the decree is Rs. 1,54,174.72. The revision Petitioner filed E.A. 28 of 2001 for fixing the reserve price for the property. Accordingly the lower court fixed reserve price at Rs. 1,60,000.

3. The Respondent/judgment-debtor filed C.R.P. 2390 of 1995 before this Court, when the property was put up for sale. This Court directed the execution court to refix the reserve price considering the circumstances of the case and to sell the property before 31st March 1996. Accordingly, the revision Petitioner filed a statement to the effect that the balance decree amount due was Rs. 2,69,618.55 and that amount was accepted as the reserve price.

4. The decree-holder/revision Petitioner also filed an application before the lower court for permission to bid at the court auction which was allowed. Though the property was proclaimed for sale on several occasions, sale did not take place since there was no bidders. Hence that E.P. was closed. Subsequently, the above E.P. is filed by the revision Petitioner on 2nd January 1999. By that time, the decree-debt increased to Rs. 4,24,897.72. The revision Petitioner filed the above E.A. to reduce the upset price to Rs. 82,489 contending to be the valuation of the property made by the Tahsildar and produced the valuation certificate issued by the Tahsildar.

5. The Respondents resisted the application contending that the intention of the revision Petitioner is to bid and purchase the plaint schedule property for a song by showing a very meagre reserve price. The lower court found that the decree-holder is not entitled to reduce the reserve price as sought for in view of the provisions of Order XXI, Rule 72A of the CPC as the revision Petitioner/ mortgagee, is permitted to bid at the sale, the reserve price cannot be less than the amount due as per the mortgage decree..

6. Order XXI, Rule 72A of CPC reads as follows:

Mortgage not to bid at sale without the leave of the court:

(1) Notwithstanding anything contained in Rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on a mortgage unless the court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the court shall fix a reserve price as regards the mortgagee, and unless the court otherwise directs, the reserve price shall be-

(a) not less than the amount then due for principal, interest and costs in respect, of the mortgage if the property is sold in one lot; and

(b) In the case of any property sold in lots, not less than such sum as shall appear to the court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of Rule 72 shall apply in relation to purchase by the decree-holder under that rule.

7. It cannot be said that once reserve price is fixed by the court, the same cannot be reduced if there is no bidders or willing purchasers of the property for the reserve price at the auction sale.

8. In the decision reported in Kuruvila Thomas and Co. Vs. State Bank of Travancore, , this Court has held that when the reserve price is fixed under Rule 72A of Order XXI of the CPC and th re are no bidders to purchase the property for; the reserve price, at the time of auction, the court has power to reduce the reserve price and fix it accordingly.

9. In the decision reported in Dr. A.U. Natarajan v. Indian Bank AIR 1981 Mad 151, the Madras High Court has held that the execution court has power to fix upset price for sale of property and also power to reduce the same under Order XXI, Rule 66(2) of Code of Civil Procedure

10. The Counsel for the Respondents submitted that though the principle laid down in the above decisions cannot be disputed, they are not applicable to the facts of this case since the mortgagee-Bank is attempting to sell the property for a pittance while the property is worth much more and such contention cannot be allowed, in view of the mandatory provision of Order XXI, Rule 72A of CPC to the effect that the reserve price should not be lesser than the amount due under the mortgage-decree.

11. The Counsel for the Respondents submitted that Order XXI, Rule 72A is incorporated in CPC by way of amendment in the year 1976 to prevent undue advantage of the decree-holders of purchasing the property brought up for sale at a very low price. In thi; case it has to be noted that the lower court fixed the reserve price or the upiet price in accordance with the amount claimed in the E.P. and the property is put up for sale after giving permission to the revision Petitioner to bid and set off under Order XXI, Rule 72A of CPC but there were no bidders to purchase the property though proclaimed and''put up for sale on different occasions.

12. Therefore the mandatory provision under Order XXI, Rule 72A is already complied with by the lower court. It has to be noted that the Respondents have no case that the lower court has not complied with the provisions of Section 72A in putting up the property for sale. Their only contention is that the revision Petitioner is seeking to reduce the reserve price to a very low amount so as to knock off the property for a meagre consideration and to proceed against them for realisation of the balance amount. The contention that due to the acts of omissions and commissions of the revision Petitioner/decree-holder, the decree-debt which was originally Rs. 1,54,000 is swelled up to Rs. 4,25,000 on 2nd January 1999 is not at all sustainable. The Respondents either could have paid the amount at least in instalments after passing the decree during all these years or they could have arranged purchasers at the time of auction when the property was put up for sale originally by 6xing the upset price as directed by this Court. Therefore the increase of the amount by passage of time is a necessary collorary of the existence of the decree unsatisfied during all these years.

13. The only further question is whether the court can fix the reserve price at any amount lesser than the amount covered by the decree on the date of fixing the reserve price under Order XXI, Rule 72A(2) of Code of Civil Procedure. It is clear from the provisions of Order XXI, Rule 66 of the CPC that the execution court has the power to reduce the upset price. Merely because of the fact that Order XXI, Rule 72A mandates that the reserve price fixed should be the amount due as per the mortgage-decree on the date when the decree-holder is permitted to bid at auction, it cannot be contended that the court is powerless to reduce

the upset price in case there is no bidder to purchase the property when the property is proclaimed and put up for sale in the court auction. It is a necessary concomitant of the power and authority of the court which has to proceed with the execution for sale of the property to reduce the reserve price so as to make the price attractive for the prospective purchaser when there are no bidders to purchase the property for the reserve price originally fixed. Therefore the fact that the mortgagee/decree-holder is permitted to bid at the court auction sale with the original reserve price at the decree-debt due it cannot be contended that when there is no bidder to purchase the property at the reserve price fixed, the court cannot reduce the reserve price reasonably so as to attract the bidders at the time of proclamation and sale of the property subsequently.

14. Under such circumstances, the finding of the lower court that since permission is granted to the revision Petitioner/decree-holder to bid and set off at the court auction sale, the reserve price cannot be reduced from the decree amount due fixed by the court cannot be sustained. The only further question to be considered is whether the reserve price can be reduced to Rs. 82,489 as contended by the revision Petitioner. Except the production of valuation certificate issued by the Tahsildar at his instance, there is no evidence on record adduced by the decree-holder to prove that the value of the property at present is Rs. 82,489 as stated by the Tahsildar and contended by the revision Petitioner.

15. The Respondents have vehemently contended that the property is worth much more than Rs. 82,489. Under such circumstances, it is clear there is no tangible evidence on record in this case with regard to the market value of the property at present. Hence the market value of the property as stated by the revision Petitioner cannot be accepted. The lower court has to conduct an enquiry with regard to the present market value and fix the reserve price in accordance with the market value of the property found by it and to proceed with the sale of the property. Hence this C.R.P. is allowed in part, the impugned order passed by the lower court is set aside and the lower court is directed to conduct an enquiry as to the present market value of the property in accordance with law and fix the reserve price of the property, reasonably, reducing the earlier upset price fixed in accordance with law, and proceed with the sale of the property.