(2020) 12 KL CK 0060

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 11151 Of 2009, 1180 Of 2010

Thomas. T.J. And Ors — APPELLANT

Vs

Trissur District Co-Opertive Bank Ltd. And Ors — RESPONDENT

Date of Decision : 03-12-2020

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Rule 81(g), 81(h), 81(i), 83(3)
Code of Civil Procedure, 1908 — Order 21 Rule 84, Order 21 Rule 85, Order 21 Rule 86

Citation : (2020) 12 KL CK 0060

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : Anil K. Nair, Dipu. R, K.S. Haridas, Merciamma Mathew, V. Renjith Kumar, Aswin. P. John, P.C. Sasidharan, C.A. Majeed, Esm. Kabeer

Final Decision : Allowed/Dismissed

Judgement

1. Petitioners avail a credit facility from the respondent Co-operative Bank on the mortgage of 92.134 cents of immovable property (comprised of

three items). Consequent on the account becoming irregular and classified NPA, the Bank filed ARC 497/2005 for recovery of the loan. In the ARC,

award was passed on 21.11.2005. In execution of the award, the said 92.134 cents of property was sold on 21.08.2008 and was purchased by the 4th

respondent-auction purchaser for an amount of Rs.32,55,000/-. In W.P.(C) No.11151 of 2009, the execution sale is under challenge. W.P.(C)

No.1180 of 2010 arises from the order in R.P. 136/2007 of the Kerala Co-operative Tribunal which was filed against the award in ARC 497/2005.

2. Heard learned counsel on either sides.

3. As regards the challenge in W.P.(C) No.1180 of 2010 is concerned, as noticed, the same relates to challenge against the award. The award in

question was passed on an admission made by the first petitioner in his deposition. Award was passed for realisation of the amount outstanding with

the agreed rate of interest and charged on the mortgaged property. In view thereof, there is no scope for interference with the award.

4. The sale held on 21.08.2008 is challenged on the ground of violation of Rule 81(h) of the Co- operative Societies Rules. The balance purchase price

not having been paid within the time stipulated under Rule 81(h), the sale falls, is the contention. It would be appropriate to refer to Sub-rules (g) and

(h) of Rule 81, which deal with deposit of purchase price.

â??81 (g) - A sum of money equal to 15% of the price of the immovable property shall be deposited by the purchaser with the sale officer at the time

of purchase and in default of such deposit, the property shall forthwith be sold.

81 (h) - The remainder of the purchase money and the amount required for the general stamp for the certificate under sub-rule (5) of R.83 shall be

paid within 15 days from the date of sale.â??

5. In terms of sub-rule(g), 15% of the purchase price is to be deposited at the time of purchase. In terms of sub-rule (h), the balance purchase price

with the amount required for the stamp paper for the certificate of purchase shall be paid within 15 days from the date of sale. 15% of the purchase

price was paid by the 4th respondent- auction purchaser on the date of sale itself. The sale having been held on 21.08.2008, in terms of Rule 81(h), the

balance amount ought to have been paid within 15 days therefrom viz. on or before 05.09.2008. However, the balance purchase price was paid only

on 12.01.2009. Pursuant to such payment, the sale was confirmed on 23.03.2009.

6. Rule 81(i) provides that in case of default in payment of the balance purchase price within a period of 15 days as required under Rule 81(h), the

Registrar may if he thinks fit, forfeit the same to the Government after defraying the expenses of the sale. Providing the consequence of non-deposit

indicates that the period for payment of the balance purchase price stipulated under Rule 81(h) is mandatory in nature. Rule 83(3) of the Co- operative

Societies Rules provides that if no application to set aside sale is made within 30 days from the date of sale, the Registrar shall confirm the sale. The

very fact that the period fixed for payment of the balance purchase price is only 15 days from the date of sale and the time provided for filing an application to set aside the sale is 30 days from the date of sale, and that on expiry of the said 30 days the Registrar is to confirm the sale, makes it

abundantly clear that the period for payment of the balance purchase price runs from the date of sale and not from the date of confirmation of the

sale. Therefore, the contention of the learned counsel for the 4th respondent that the balance purchase price need to be paid only after the

confirmation of the sale is devoid of merit.

7. The Code of Civil Procedure contains similar provisions with regard to sale of immovable property and the period for payment of the purchase

price. Rules 84, 85 and 86 of Order XXI of the Code are relevant. In terms of Order XXI Rule 84, in an execution sale, 25% of the purchase price

shall be deposited immediately on sale, by the auction purchaser. As per Rule 85, the balance purchase price shall be paid within 15 days from the

date of sale. Rule 86 provides that in case of default in payment within the said period, the deposit may be forfeited to the Government and the

property re- sold. That, compliance with the said provisions are mandatory and default in payment of the balance purchase price within the period as

stipulated renders the sale a complete nullity has been declared by the Apex Court in Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed

Mahmad and Anr. [AIR 1954 SC 349]. The Apex Court held that, in view of the mandatory provisions, on failure to make the payment as required

under the Rules, there is no sale in the eye of law. In Gangabai Gopaldas Mohata v. Fulchand and others [AIR 1997 SC 1812]it was held that, on

non-compliance with the mandatory provision for deposit of balance purchase within the time prescribed, the sale would stand annulled â??ipso jure

without anything moreâ?. The same principle applies in the case at hand also. The balance purchase price having not been paid within the time

stipulated under the Co-operative Societies Rules, the sale dated 21.08.2008 is a nullity.

8. The learned counsel for the auction purchaser/4th respondent though relied on the fact that WP(c) 24863/2008 and WP(c) 26918/2008 filed by the

petitioners-award debtors were pending before this Court and that the confirmation of the sale was deferred in WPC 26918/2008, the same is hardly

of any avail to the auction purchaser since there were no orders interdicting the deposit of the balance purchase price nor was there any order by this

Court extending the time for payment of the balance purchase price. The learned counsel for the auction purchaser as well as the Bank would

vehemently contend that several interim orders were passed by this Court in the various rounds of litigation including the present, directing the

petitioner to deposit part of the debt, but the petitioner did not comply with the same. The petitioner does not deserve any equitable considerations

whereas the auction purchaser does, contends the counsel. When the sale is a nullity or where there is no sale at all in the eye of law, equitable

considerations cannot uphold the sale.

9. Though as per order dated 26.12.2008, the Joint Registrar purported to grant permission for payment of the balance purchase price and the balance

purchase price was paid on 12.01.2009, the same is of no profit since the Joint Registrar did not have the power to grant such extension of time. As

held by the Apex Court in Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed Mahmad and Anr. (supra) and Gangabai Gopaldas Mohata

v. Fulchand and others (supra), non- compliance with the mandatory provision for deposit of the balance purchase price within the time stipulated,

renders the sale void. Accordingly the sale held on 21.08.2008 is declared a nullity.

10. The sale having been declared a nullity, necessarily, the property is to be reverted/restituted back to the owner. So also, the purchase price paid

into the Bank by the 4th respondent-auction purchaser is liable to be returned. It is to be noticed that 12 years have elapsed since the date of sale. The

Bank having enjoyed the amount these years shall pay interest on the said amount at 6% per annum from 12.01.2009, namely the date of payment of

the balance purchase price. The 4th respondent shall vacate the property in question and the Bank shall return the entire purchase price paid by him

with interest as ordered. The execution proceedings will stand restored and the Bank is at liberty to realise the decree debt/award debt with interest as

awarded. Needless to say that the property continues to retain the character of mortgaged property and shall be liable to be proceeded against afresh

for realisation of the debt.

WP(C) No.11151/2009 is allowed as above and W.P.(C) No.1180/2010 is dismissed.

