
(1998) 10 AP CK 0012

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 3511, 3512 and 3740 of 1998 and CMP. 20367 of 1998 in
CRP 3740 of 1998

W. Veerabhadra Rao

APPELLANT

Vs

Nedungudi Bank Limited and Others

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

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

Citation : (1998) 6 ALT 216

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyulu and G. Balesh, in CMP No. 20367/98, for the
Appellant; Akella Srinivasa Rao and G. Balesh, in C.R.Ps., for the Respondent

Final Decision : Allowed

Judgement

C.V.N. Sastri, J.—Heard the learned Counsel for all the parties. These three revision petitions and CMP (SR) No. 68210 (CMP No. 20367) of 1998 in C.R.P.No. 3740 of 1998 can be disposed of by a common order since they arise out of the self-same execution proceedings.

2. The question which arises in these revision petitions is whether the Executing Court can extend the time for depositing the amounts as per Rules 84 and 85 of Order 21 C.P.C. by the auction purchaser. Rule 84 (1) provides that on every sale of immovable property, the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25% on the amount of his purchase money to the Officer or other person conducting the sale and in default of such deposit, the property shall forth with be resold. Rule 85 provides that the full amount of purchase money payable shall be paid by the purchaser into the Court before the Court closes on the 15th day from the sale of the property. As per the Andhra Pradesh State Amendment to Rule 85, the full amount of purchase money payable and the general stamp for the certificate under Rule 94 or the amounts required for such stamp shall be deposited into the Court by the

purchaser before the Court closes on the 15th day from the sale of the property.

3. In the instant case, the sale was held on 19-8-1998 and the sale was knocked down in favour of Mr. S. Chandrasekhar for Rs. 3.15 lakhs being the highest bidder. The Amin who conducted the sale was directed to collect the 1/4th of the sale amount and poundage from the auction purchaser and to deposit the same in the Bank on that day. The Court further directed that the balance is payable within 14 days. The Execution Petition was directed to be called on 1-9-1998 for balance payment. The auction purchaser deposited only a sum of Rs. 52,000/- on the date of the sale and sought for one day's time for depositing the balance of Rs. 27,000/- to make up 1/4th of the sale amount. The Execution Court passed an order thereon permitting the auction purchaser to deposit the said amount of Rs. 27,000/- by 12.00 noon on the next day i.e., on 20-8-1998. Questioning this order, C.R.P.No. 3512 of 1998 is filed by the judgment-debtor. The auction purchaser deposited a sum of Rs. 26,750/- on 20-8-1998. Subsequently, on 1-9-1998 he deposited a sum of Rs. 1,85,000/- and filed an application for enlarging the time for depositing the balance amount by 20 days. The Court passed an order dated 1-9-1998 thereon extending the time for depositing the balance of Rs. 51,250 till 2-9-1998. Accordingly, the auction purchaser deposited the sum of Rs. 51,250/- on 2-9-1998. He however failed to deposit the non-judicial stamps as per the State amendment to Rule 85 of Order 21 CPC. The lower Court passed an order on 2-9-1998 granting time for depositing the non-judicial stamps till 16-9-1998. Questioning this order, CR.P. No. 3511 of 1998 is filed by the judgment-debtor. The non-judicial stamps were deposited on 16-9-1998 by the auction-purchaser. On that date, the Executing Court confirmed the sale, issued sale certificate to the auction purchaser and closed the Execution Petition. Questioning the said order, CR.P. No. 3740 of 1998 is filed.

4. In Balram Vs. Ilam Singh and others, the Supreme Court held that the provisions of Order 21 Rules 84 and 85 are mandatory and that short payment in sale price made by the auction purchaser and non-compliance with the mandatory provisions of the said rules renders the sale a nullity. It was further held that the Executing Court has no power to extend the time fixed under the said rules and that subsequent payment of the required amounts by the auction purchaser did not cure the defect.

5. In view of this authoritative pronouncement of the Supreme Court, the impugned orders passed by the lower Court cannot be sustained. Accordingly, the C.R.Ps are allowed, the impugned orders are set aside and the lower Court is directed to conduct the resale of the property. C.M.P. (SR) No. 68210 of 1998 in CR.P. No. 3740 of 1998 is filed by the auction purchaser seeking refund of the amounts deposited by him in the Court. This C.M.P. is ordered and the lower Court is directed to refund the said amounts to the auction purchaser.