

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2489 of 2015

ORDER:

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This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the Judgment Debtor is directed against the orders dated 28.04.2015 of the learned Senior Civil Judge, Nuzvid passed in EA.no.106 of 2015 in EP.no.47 of 2014 in OS.no.201 of 2012 filed by the JDr under Order XXI Rule 90 of the Code.

2. I have heard the submissions of the learned counsel for the revision petitioner/JDr ('the JDr', for brevity) and the learned counsel for the respondent/DHr ('the DHr', for brevity). I have perused the material record.

3. The facts, which are necessary and relevant to be stated at the outset, in brief, are as follows:

The DHr having obtained a decree for money had filed the Execution Petition (EP) against the JDr for recovery of the decree debt in a sum of Rs.3,76,090/- with subsequent interest and costs by attachment and sale of the EP schedule house property in an extent of 102 Sq.yards situate at G. Konduru village. The JDr having put in appearance had participated in the execution proceedings. After various steps in the execution proceedings including settlement of terms, the Court of execution had directed that the property be proclaimed and sold on 22.01.2015 after publication in Andhra Jyothi Daily. On the date the sale was to be held in open Court i.e., on 22.01.2015, the publication as directed by the Court was filed into Court. However, as the Presiding Officer was on leave, the matter was adjourned to 23.01.2015. On that day, the Court of execution having taken note of the fact that publication was filed into Court on 22.01.2015 had proceeded to conduct the sale. A claim application filed by a third party claiming to be a purchaser under an agreement of sale was returned and not re-presented. The DHr filed an application under Order XXI Rule 72 of the Code for permission to bid for and purchase the property in the Court auction. The Court below had

allowed the said petition. As the JDr had failed to pay the decree debt or part of the decree debt and did not seek adjournment of sale on any ground and as the bidders including the DHr were present, the court below had conducted the auction sale of the EP schedule property. The DHr became the highest/successful bidder in the said auction. Therefore, the sale was knocked down in his favour. The DHr had paid the required amount on the same day. The DHr was permitted to set off the amount due under the decree from out of the purchase money and deposit the balance of purchase money. Accordingly, the DHr has deposited the balance of purchase money. Subsequent thereto, as per the submissions made before this Court at the hearing, a sale certificate was also issued to the DHr and the DHr had taken further steps for delivery of the property. Be that as it may. In the said execution proceedings, the JDr has filed the petition aforementioned to set aside the sale conducted on 23.01.2015. The said petition was resisted by the DHr. On merits, the Court below had dismissed the said petition. Therefore, the JDr is before this Court.

4. The case of the JDr in support of his request to set aside the sale, in brief, is as follows:

The JDr is the absolute owner of the EP schedule property which was sold by the Court below in a Court auction on 23.01.2015. The Court below had fixed 22.01.2015 as the day for auction sale of the EP schedule property. However, the auction sale was not held on that day, as the Presiding Officer of the Court was on leave on that day. Therefore, the matter adjourned to the next day i.e., 23.01.2015. On that day after according permission to the DHr to bid for and purchase the EP schedule property in the Court auction, the Court below had conducted auction sale and knocked down the sale in favour of the DHr as he became the highest bidder for Rs.7,60,000/-. Thus, without following the procedure established by law, the sale was adjourned from 22.01.2015 to 23.01.2015 as the Presiding Officer is on leave. The sale was not adjourned as per the provision of Rule 59 of the Civil Rules of Practice. Hence, the auction sale conducted by the Court on 23.01.2015 is illegal and not valid. The permission accorded, without recording any

reasons, to the DHr for bidding and purchasing the EP schedule property in Court auction sale is also illegal and not valid. The Court below did not take into consideration the actual market value of the property. No market value certificate was produced by the DHr showing the value of the EP schedule property. The DHr mentioned the value of the property as rupees four lakhs whereas the Field Assistant of the Court mentioned the value of the property as rupees six lakhs and the said valuations of the property were taken at the time of settlement of terms. The property was sold in the Court auction for an amount which is far less than the market value. Had the Court below insisted upon production of a market value certificate, it would have been revealed that the values furnished by the DHr and the Court Officer are not correct. Had the correct market value been furnished, the Court below would have fixed proper upset price on the date of auction sale and the property would have fetched more purchase money in public auction. For non-mentioning of the correct value of the property, the sale of the property in Court auction sale did not fetch the highest and correct sale amount. The bidders who had participated in the Court auction sale are the henchmen of the DHr. There are several irregularities in the conduct of the sale. Therefore, the sale is liable to be set aside.

5. The case of the DHr is as follows: - 'The Court below had followed the proper and correct procedure in the execution proceedings. All the contentions stated in the affidavit of the JDr are incorrect and are contrary to the record of the Court. As directed by the Court from time to time, the DHr had taken the necessary steps like filing of sale papers, payment of batta/process for sale proclamation and issuance of notices to the JDr from time to time. After following the due and necessary procedure, the terms were settled on the day the matter was listed for settlement of terms. The DHr's value and the value of the Court Officer, who made a personal inspection of the property, are mentioned in the record. The JDr who is participating in the proceedings did not file any objections to the said values and also did not furnish any market value certificate issued by a competent authority showing that the property is of a higher value. On settlement of the

terms, the Court directed for a publication to be made in Andhra Jyothi Telugu daily and fixed the date of sale as 22.01.2015. The publication was duly made and was filed into Court on that day. However, as the Presiding Officer was on leave, the EP was adjourned to 23.01.2015, i.e., the next day. On the date of auction sale, the JDr had got filed a petition under Order XXI Rule 58 of the Code in collusion with one Sowbhagyam; and in that application she had claimed that she had purchased the EP schedule property under an agreement of sale dated 01.01.2015. In that document the consideration and value of the property was mentioned as Rs.91,800/-. However, that petition was returned with office objections and was not represented. On that day of sale, on the application of the DHr, permission was accorded to him to bid for and purchase. In the Court auction sale, the DHr has become the successful bidder. Therefore, the sale was knocked down in his favour on 23.01.2015. He has deposited the amounts due towards the purchase money after setting off the money due to him under the decree. Though the sale was held on 23.01.2015, the JDr had kept quiet and had filed the present application on 18.02.2015. In the meanwhile, the DHr had deposited the balance purchase amount on 31.01.2015 apart from the 1/4th bid amount, which was deposited on the day of the auction sale. The sale was adjourned from 22.01.2015 to 23.01.2015 as the Presiding Officer was on leave, but, not at the instance of the DHr and, therefore, the provisions of law being relied upon by the JDr are not applicable to the present case facts. There is no illegality or irregularity in the Court auction sale. The JDr did not avail the opportunity, which was available to him to set aside the sale on deposit of the required sums as required under law. The application under Order 21 Rule 90 of the Code to set aside the sale on the ground of irregularity is not maintainable as no substantial injury on account of any alleged irregularity had occasioned to the JDr. The JDr ought to have taken the objections, if any, on the date of the sale but, he did not do so. He should have taken the objection in regard to the market value of the property on the date on which the proclamation of sale was drawn up. However, he did not take any such objections on that date or subsequent thereto and had allowed the property to be sold in a Court auction sale on 23.01.2015. Therefore, he cannot be permitted to raise all

these objections long after the sale has been confirmed. Hence, the petition is liable to be dismissed.'

6. The learned counsel for both the sides made submissions in line with the respective pleaded cases.

7. From the pleadings and submissions it emerges that the JD^r is mainly contending that the Court auction sale is irregular and is liable to be set aside on two grounds. Firstly, the market values of the EP schedule property as mentioned by the DH^r and the Field Assistant of the Court are far less than the actual market value of the EP schedule property and that had the Court below taken care to ascertain the correct market value, the property would have fetched more amount in the Court auction sale. Secondly, the Court has fixed 22.01.2015 as the date for court auction sale and that on that day as the Presiding Officer was on leave, the matter was adjourned to 23.01.2015 and that while the matter was so adjourned, the procedure contemplated under law was not followed and that, therefore, the Court auction sale held on 23.01.2015 is irregular and invalid and that it is liable to be set aside.

8. Dealing first with the aspect in regard to the correctness or otherwise of the market value of the property, it is to be noted that the DH^r has mentioned the value of the property as rupees four lakhs and the Court officer, who had personally visited the property, had determined the market value at rupees six lakhs. The JD^r, who is participating in the execution proceedings did not file his objections stating that the values mentioned by the DH^r and the Court Officer are far less than the market value; and he had failed to produce a market value certificate issued by a competent authority to show that the market value of the property is far higher than those mentioned by the DH^r and the Court Officer. Hence, the Court below having taken into consideration the values mentioned by the DH^r and the Court Officer had proceeded further with the execution proceedings. The JD^r who had an opportunity to put-forth his contentions in regard to market value did not take any interest in the matter on or before the date on which the proclamation of sale was drawn up by the Court below. Therefore, in view of sub-rule 3 of

Rule 93 of Order XXI the application to set aside sale filed by the JDr is not maintainable as the said Rule ordains that 'no application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up'. Therefore, the belated contention of the JDr cannot be countenanced. Even otherwise the Court below had noted in its orders that in the agreement of sale relied upon in a proposed claim petition the value of property that was mentioned was far less than the market value for which the property was sold in Court auction. Further, the property was sold in the Court auction for Rs.7,60,000/- which is sufficiently higher than the value fixed by the Court Officer i.e., Rs.6,00,000/-.

9. Coming to the next contention that sale held on 23.01.2015 was irregular and illegal as the sale which was supposed to be held on 22.01.2015 was not held on that and was adjourned from that day to 23.01.2015, without following the procedure under law and the practice, what is to be noted is that the sale was adjourned by a day on account of the fact that the Presiding Officer was on leave on 22.01.2015; and, indeed the Court auction sale was held on 23.01.2015. In the light of the facts and contentions it is necessary to refer to Rule 69 of Order XXI of the Code which reads as under:

'Adjournment or stoppage of sale: - (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under Rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

The Rule ordains that unless the JDr consents to waive his right in regard to

fresh sale proclamation, the sale cannot be adjourned for a longer period than thirty days. Thus, if sale is adjourned to a longer period than thirty days, without the consent of the JDr, a fresh proclamation under Rule 67 shall be made. In the case on hand, the sale was adjourned only to the next day that too as the Presiding Officer was on leave on the specified date. Since the sale was adjourned by a day, the contention that the sale is vitiated cannot be countenanced. Be that as it may. The DHr cannot be penalized for no fault of his in view of the legal maxim *actus curiae neminem gravabit*, which means, for the mistake, if any, of Court, no party shall be penalised. Further, the property was sold in the Court auction sale for Rs.7,60,000/-, which is sufficiently higher than the value fixed by the Court Officer i.e., Rs.6,00,000/-. Further under sub-rule (2) of Rule 90 of Order XXI no sale shall be set aside on the ground of irregularity in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity. In the case on hand, the JDr did not adduce any evidence to show, as required under law, that he has sustained any substantial injury. Therefore, both the contentions raised by the JDr are devoid of merit.

10. In regard to the other contentions viz., that the other bidders at the sale are the henchmen of the DHr etcetera, it has to be observed that all the said contentions had remained unsubstantiated as no evidence was adduced and no material was placed before the Court below in support of the said contentions. Viewed thus, this Court finds that the Court below is justified in dismissing the petition and that there is no merit in the revision petition.

11. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this revision shall stand closed.

JUSTICE M. SEETHARAMA MURTI

18th April, 2016

Vjl

