

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 1166 OF 2015

ORDER:

This Revision is filed challenging the order dated 02.03.2015 in E.A.No. 392 of 2012 in E.P.No. 11 of 2012 in O.S.No. 7 of 2006 of the Senior Civil Judge, Puttur, Chittoor District.

2. Heard Sri V. Jagapathi, learned counsel for the petitioner. None appears for the respondent even though notices in the Revision have been served on them.

3. The point which arises for consideration in the Revision is “whether the deposit of the amount prescribed under Order 21 Rule 89 CPC can be made beyond 30 days from the date of the sale or within 60 days from the date of the sale.”

4. In the present case, the petitioner, who is a purchaser of a property, which is the subject matter of E.P.No. 11 of 2012 in O.S.No. 7 of 2006 on the file of Senior Civil Judge, Puttur, Chittoor District, filed E.A.NO. 392 of 2012 to set aside the sale invoking Order 21 Rule 89 CPC. It is not disputed that the sale and auction were conducted on 2.11.2012. The petitioner deposited the amount prescribed under Order 21 Rule 89 CPC on 3.12.2012 i.e., on the 31st day from the date of the sale, but within 60 days prescribed under Article 127 of the Limitation Act, 1963. By the impugned order, the Court below took the view that since the deposit by the petitioner was made beyond 30 days, the application under Order 21 Rule 89 CPC is not maintainable. It relied on the judgment of this Court reported in ***Devineni Durgamba V. Raj Kumar Financiers, Vijayawada***^[1].

5. Counsel for the petitioner has placed before me the judgment in ***Dadi Jagannadham v. Jammulu Ramulu and others***^[2] wherein the Supreme Court has held that Order 21 Rule 89 CPC does not prescribe any period within which the application is to be made or deposit is to be made; all that Order 21 Rule 92(2) CPC provides is that if the deposit is made within 30 days from the date of sale and an application is filed then, the Court would have no discretion but to set aside the sale; and that does not mean that if the deposit is made after 30 days, the Court could not entertain the application. It held that if the deposit is made beyond the period of 30 days, but within the period of 60 days, then it will be within the discretion of the Court whether or not to grant the application. The Supreme Court set aside its earlier judgment in ***P.K.Unni V. Nirmala Industries***^[3], wherein it had taken a contrary view.

6. In the present case, deposit is made beyond 30 days but within 60 days. In view of the above decision of the Supreme Court, the Court below has discretion whether or not to grant the application under Order 21 Rule 89 CPC filed by the petitioner. Therefore, the order passed by the Court below that the application under Order 21 Rule 89 CPC filed by the petitioner is not maintainable since the petitioner had not deposited the amount prescribed under Order 21 Rule 89 CPC within 30 days from the date of the sale, cannot be sustained. Therefore, the said order is set aside.

7. Accordingly, the Civil Revision Petition is allowed and the Court below is directed to consider whether it would exercise its discretion to grant or not to grant the application under

Order 21 Rule 89 CPC since the deposit in question was made on 31st day from the date of the sale but within 60 days from the date of the sale.

8. Therefore, the order dated 2.3.2015 in E.A.No. 392 of 2012 in E.P.No. 11 of 2012 in O.S.No. 7 of 2006 of the Senior Civil Judge, Puttur, Chittoor District is set aside and E.A.No. 392 of 2012 is remitted back to the said Court to consider the question whether it would grant or not to grant the application under Order 21 Rule 89 CPC keeping in mind the decision of the Supreme Court in ***Dadi jagannadham*** (2 supra). This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

9. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.06.2015
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[\[1\]](#) 1998 (4) ALT 145
[\[2\]](#) AIR 2001 SC 2699
[\[3\]](#) AIR 1990 SC 933