## THE HON'BLE SRI JUSTICE SANJAY KUMAR

## CIVIL REVISION PETITION NO.1519 OF 2016

## O R D E R

This civil revision petition, under Article 227 of the Constitution, arises out of E.P.No.22 of 2011 in O.S.No.188 of 2008 on the file of the learned Senior Civil Judge, Tanuku.

O.S.No.188 of 2008 was filed by the first respondent herein for recovery of money. This suit was decreed on 23.06.2009. The petitioner herein is the defendant/judgment debtor in the suit. E.P.No.22 of 2011 was filed by the first respondent/decree holder for execution of the decree and in pursuance thereof, the property of the petitioner/judgment debtor, being a building and site of 115½ square yards in Chivatam Village, Undrajavaram Mandal, West Godavari District, was brought to sale in 2012. The second respondent herein was the successful auction purchaser. It appears that the second respondent/auction purchaser filed an application in January, 2014, before the executing Court for issuance of a fresh warrant of delivery and for police aid to secure possession by breaking open the lock affixed to the property sold. The petitioner/judgment debtor then filed an application on 16.10.2014 under Order 21 Rule 89 CPC before the executing Court to set aside the execution sale. By docket order dated 16.10.2014, the executing Court opined that the application was filed after the stipulated time and returned it to show-cause within 7 days how it is maintainable. Aggrieved by this docket order, the petitioner/judgment debtor is before this Court.

The decree dated 23.06.2009 in O.S.No.188 of 2008 on the file of the learned Senior Civil Judge, Tanuku, seems to have attained finality as no mention is made of any appeal having been filed. In so far as the execution sale is concerned, the material papers reflect that the first respondent/decree holder filed the execution petition in March, 2010, and after compliance with office objections the same was numbered as E.P.No.22 of 2011. The docket proceedings placed on record demonstrate that the executing Court ordered notice to the petitioner/judgment debtor in April, 2011 and the docket order dated 23.08.2011 records that notice was duly served. The matter was then adjourned for counter. On 01.11.2011, the executing Court recorded that a counter had not been filed and proceeded with the matter. The sale was held on 27.06.2012 after publication in newspapers and the second respondent herein emerged as the auction purchaser. The executing Court then took note of the fact that no petition had been filed to set aside the sale and confirmed it, by order dated 19.10.2012. The matter was adjourned for issuance of a sale certificate. After completion of necessary formalities by the auction purchaser, the executing Court issued a sale certificate on 11.03.2013 and closed the execution petition.

This, being the factual history, the affidavit filed in support of the application to set aside the aforestated execution sale is woefully bereft of necessary particulars. Therein, the petitioner/judgment debtor merely stated the facts and expressed his willingness to deposit the entire sale consideration and the amounts payable to the decree holder and the auction purchaser. He pleaded that if the sale was not set aside, he would sustain irreparable injury.

As earlier stated, this application was filed by the petitioner/ judgment debtor under Order 21 Rule 89 CPC and not under Order 21 Rule 90 CPC. Significantly, in the affidavit filed in support of this revision, the petitioner/judgment debtor insinuated that the execution sale was held illegally. No such claim was however made by him before the executing Court. Had he alleged any such irregularity or fraud in the conduct of the execution sale, the petitioner/judgment debtor should have taken recourse to Order 21 Rule 90 CPC and not Order 21 Rule 89 CPC. Under the latter provision, if any immovable property is sold in execution of a decree, the judgment debtor may apply to have the sale set aside upon depositing in Court the sums stipulated thereunder. Order 21 Rule 92 CPC speaks of when an execution sale is to become absolute or alternately, when it is to be held to have been set aside. Thereunder, when an application is made under Order 21 Rule 89 CPC, the deposits required thereunder are to be made within 60 days from the date of the sale. By implication, the application under Order 21 Rule 89 CPC must also be made within 60 days of the execution sale. In the present case, there is no dispute that the sale in favour of the second respondent/auction purchaser was held as long back as on 27.06.2012 and was confirmed on 19.10.2012. A sale certificate was issued on 11.03.2013 and the execution petition itself stood closed. The application to set aside the sale was filed in October, 2014! The petitioner/judgment debtor did not even attempt to explain his complete inaction throughout. The docket proceedings reflect that newspaper publication was carried out on more than one occasion. The burden was therefore upon the petitioner/judgment debtor to explain his continued somnolence.

That apart, once the statute required the application to set aside the execution sale to be filed under Order 21 Rule 89 CPC within the time stipulated, this Court finds no irregularity in the executing Court raising this issue and returning the application filed by the petitioner/judgment debtor to explain its maintainability in terms of the limitation aspect.

Sri S.Sriramachandra Murthy, learned counsel for the petitioner/judgment debtor, would however place reliance on case law to support his argument that the executing Court ought not to have returned the application filed by his client.

In ***NANI GOPAL PAUL V/s. T.PRASAD SINGH***[1], the Supreme Court observed that the Court would not remain a mute or helpless spectator to an obvious or manifest illegality committed in the conduct of a Court sale even if an application to set aside such a sale is not filed within time. The *ratio* of this judgment turns upon a demonstrable illegality in the conduct of the sale. As already stated *supra*, the petitioner/judgment debtor never took such a ground before the executing Court. This judgment is therefore of no avail.

In ***M/S. MAHAKAL AUTOMOBILES V/s. KISHAN SWAROOP***

***SHARMA***[2], it was observed that each stage of the Court sale is governed by the provisions of the CPC and it is mandatory that notice should be served upon the person whose property is being sold in execution of a decree and failing to do so would render the sale a nullity. This judgment also does not further the case of the petitioner/judgment debtor as he never took the ground that he was not served the notice, as recorded in the docket proceedings.

In ***Y.RUPLA NAIKA V/s. MOHAMMED MUSTHAFA***[3], a learned Judge of the Karnataka High Court was dealing with an application filed under Order 21 Rule 90 CPC relating to setting aside of a sale on the ground of irregularity/fraud. The application of the petitioner/judgment debtor in the present case is not under this provision and the judgment therefore has no application.

On the above analysis, this Court finds no irregularity in the executing Court returning the application filed by the petitioner/ judgment debtor under Order 21 Rule 89 CPC on the ground of limitation. Without endeavoring to offer his explanation as regards its maintainability as directed, the petitioner/judgment debtor chose to approach this Court. In the light of the arguments advanced, this Court had no option but to deal with the matter on merits. Having done so, this Court finds itself in complete agreement with the executing Court that the application filed by the petitioner/judgment debtor under Order 21 Rule 89 CPC is barred by limitation.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

**SANJAY KUMAR, J**

**26th APRIL, 2016**

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[1] AIR 1995 SUPREME COURT 1971

[2] AIR 2008 SUPREME COURT 2061

[3] KCCR-2014-2-1705 = LAWS (KAR)-2013-10-94