

Reserved On : 22.12.2016

Delivered On : 17.02.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17 .02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

O.S.A.No.79 of 2013
and MP No.1 of 2013

Mrs.Kalaiselvi

Appellant

vs

1. The Official Assignee
High Court of Madras
Chennai – 600 104
2. G.M. Jayaraman
3. J. Thiagarajan
4. Dr.Neeraja Ananth
(4th respondent impleaded as per
the order of this Court dated
22.12.2016 in MP No.2 of 2013)

... Respondents

Appeal filed Under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 07.01.2013 passed in Application No.265 of 2012 in IP No.84 of 2001.

For Appellant	:	Mr.Radhakrishnan
For R.1	:	Official Assignee High Court, Madras
For R.2 & R.3	:	Mr.C. Ramesh
For R.4	:	Mr.S. Parthasarathy, Senior Counsel for Mr.G.B. Rajesh

JUDGMENT

N. AUTHINATHAN, J.

This Original Side Appeal has been filed challenging the order of the learned Single Judge dated 07.01.2013 made in Application No.265 of 2012 in IP No.84 of 2001

2. G.M. Jayaraman and J. Thiagarajan were adjudicated as insolvents by an Order of this Court, dated 14.06.2001. The Official Assignee had taken over the property of the insolvents. In pursuance of the order of this Court, a Flat bearing No.2, Ground Floor, Plot No.754, 4th Avenue, "D" Sector, Anna Nagar West, Chennai – 101 was put up for auction sale by the Official Assignee and the auction was

held on 28.09.2011. The appellant became the successful bidder. She offered to purchase the flat for a sum of Rs.53,25,000/- and she was declared to be the purchaser of the property in the auction sale. She deposited Rs.15,00,000/- to the Official Assignee. The sale was confirmed by this Court dated 02.04.2012. The appellant was to pay the balance purchase money within thirty days from the date of confirmation. The appellant failed to deposit the balance purchase money within the stipulated time.

3. The appellant filed an application in A.No.265 of 2012 seeking an order to condone the delay of 61 days in paying the balance sale price and direct the Official Assignee to execute the sale deed in her favour as per the sale confirmation order passed by this Court in Application No.93 of 2012 dated 02.04.2012.

4. The Official Assignee opposed the application stating that the appellant wilfully committed default in payment of balance purchase money.

5. The learned Single Judge, placing reliance on the judgments of the Hon'ble Supreme Court in the cases of **Manilal**

Mohanlal Shah and Others vs Sardar Sayd Ahmed Sayed Mahmad and another (AIR 1954 SC 349) and Sardara Singh (Dead) by Lrs and another vs Sardara Singh (Dead) and others (1990 (4) SCC 90), dismissed the application. The auction in favour of the appellant was ordered to be set aside with a direction to the Official Assignee to re-advertise the property for auction. The auction was directed to be conducted within a period of one month from the date of the order. The Reserved Price was fixed at Rs.62,00,000/-. Aggrieved by the order of the dismissal, the appellant has come up with this appeal.

6. The learned counsel for the appellant would submit that though the appellant has been shown as a party in the application in A.No.93 of 2012, no notice was served on her and she has filed the petition to condone the delay of 61 days in making the payment of balance purchase money only with a view to avoid technicalities. According to the learned counsel, the balance money was to be paid within thirty days from the date of intimation of the confirmation of sale to her.

7. Admittedly, the appellant paid the balance purchase money to the Official Assignee on 02.07.2012 by means of a Demand Draft dated 29.06.2012. In the affidavit, filed in support of her petition, the appellant has stated that a photocopy of the order of the confirmation dated 02.04.2012 was given by the Official Assignee only on 07.06.2012 after obtaining signatures. Therefore, according to the appellant, the balance purchase money was paid within thirty days from 07.06.2012.

8. It is not in dispute that the auction sale was governed by the terms and conditions. Clause 6 of the Condition reads as follows:

*"The Purchaser has to wait until the sale is confirmed by the Official Assignee or by the Hon'ble High Court. No interest shall be given for deposit made by the Highest Bidder Purchaser. **No Separate intimation of confirmation of sale will be sent. The Purchaser has to follow after the sale is knocked down in his favour.***

9. In the said clause, it has been pointedly stated that no separate intimation of confirmation of sale will be sent and the

purchaser has to follow after the sale is knocked down in his favour. A close consideration of Clause-6 of the terms and conditions of the Auction Sale extracted supra would reveal that the appellant is not bound to inform about the confirmation of sale and it is for her to follow after the sale is knocked down in his favour. In the light of the said condition, the contention of the appellant that thirty days period for the payment of the balance purchase money has to be calculated from the date of intimation of confirmation of sale cannot be countenanced.

10. The ambit and scope of the provisions of Rules 84 to 86 of Order 21 have been explained by the Hon'ble Supreme Court in the cases of **Manilal Mohanlal Shah and Others vs Sardar Sayd Ahmed Sayed Mahmad and another** reported in **AIR 1954 SC 349** and **Sardara Singh (Dead) by Lrs and another vs Sardara Singh (Dead) and others** reported in **1990 (4) SCC 90**. As per the dictum laid down by the Hon'ble Supreme Court the provisions of Rules requiring to deposit the purchase money within the time limit are mandatory and non payment of price on the part of the defaulting purchasers renders the sale proceedings as a complete nullity. In case of default in payment of price by the auction purchaser, the property

shall be resold after issuing fresh notification.

11. It is not in dispute that the provisions of Rules 84 to 86 are applicable to sale proceedings in question. The learned Single Judge, placing reliance on the dictum laid down by the Hon'ble Supreme Court dismissed the application.

12. The impugned order has been passed on appreciation of the facts and circumstance of the case. In our considered view, the conclusion reached by the learned Single Judge, deserves to be upheld.

13. In this view, the Appeal has to fail. Accordingly, the same is dismissed and the order of the learned Single Judge dated 07.01.2013 made in Application No.265 of 2012 in IP No.84 of 2001 is confirmed. No costs. Consequently, connected MP is closed.

(S.N.J.,) (N.A.N.J.,)
17-02-2017

Index : Yes/no
Internet : Yes/no

sr

Note: Issue Order copy today

S.NAGAMUTHU,J.
And
N. AUTHINATHAN,J.,

sr

To

The Sub Assistant Registrar,
(Original Side),
High Court, Chennai.

Pre-Delivery Judgment in
O.S.A No.79 of 2013

-02-2017

Pre-Delivery Judgment in O.S.A No.79 of 2013

The Hon'ble Thiru Justice **S. NAGAMUTHU**

Justice N. AUTHINATHAN

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