

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.6348 OF 2016

O R D E R

The petitioner is the decree-holder in O.S.No.56 of 2015 on the file of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed by him for recovery of a sum of Rs.68,99,375/- from the defendants. Attachment before judgment was ordered on 29.04.2015 in I.A.No.309 of 2015 in O.S.No.56 of 2015 in respect of two items of property, one being Plot No.23 admeasuring 186.60 square yards situated in Sy.Nos.67 and 68 of Prasanthnagar, Kukatpally Municipality, Balanagar Mandal, Ranga Reddy District. The suit was decreed on 30.09.2015. Seeking execution of the said decree, the petitioner filed E.P.No.118 of 2016 before the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar, seeking to bring to sale the attached property situated in Ranga Reddy District. Sale proclamation was issued by the executing Court proposing to hold an auction sale on 27.10.2016. However, no bidders came forward. By an order of the same date, the executing Court recorded this fact and dismissed the execution petition continuing the attachment for three months. Aggrieved by the dismissal of the execution petition, the decree-holder is before this Court by way of this revision under Section 115 CPC.

Despite service of notice, the respondents/judgment-debtors did not choose to enter appearance before this Court either in person or through learned counsel.

By order dated 20.01.2017, this Court took note of the fact that the attachment extended by the executing Court would be expiring shortly and directed the same to be continued until further orders.

Heard Smt.Manjiri S Ganu, learned counsel for the petitioner/decree-holder.

The order dated 27.10.2016 passed by the executing Court does not record the reason as to why the execution petition was dismissed. Presence of the decree-holder was noted therein but the sale was stopped as there were no bidders.

Order 21 Rule 64 CPC empowers the executing Court to order any attached property to be sold so that the proceeds of such sale or sufficient portion thereof can be paid to the decree-holder to satisfy the decree. Order 21 Rule 66 CPC deals with the proclamation of sale by public auction of such property. Order 21 Rule 67 CPC sets out the mode of making the proclamation. Order 21 Rule 69 CPC deals with adjournment or stoppage of the sale. Sub-rule (1) thereof speaks of the discretion of the executing Court to adjourn the sale to a specified day and hour and the discretion of the officer conducting such sale to adjourn it, duly recording the reasons therefor. The proviso to this Sub-rule states that where the sale is made within the precincts of the Court-house, no such adjournment shall be made without the leave of the Court. Sub-rule (2) provides that where a sale is adjourned under Sub-rule (1) for a longer period than 30 days, a fresh proclamation under Order 21 Rule 67 CPC would have to be made, unless the judgment-debtor consents to waive it.

The aforestated statutory regime clearly spells out that it is within the discretion of the executing Court to adjourn the sale to a specified day and hour and in the event such an adjournment puts the day of the proposed sale beyond 30 days from the date of adjournment, a fresh proclamation would have to be made.

In the present case, merely because there are no bidders present, there is no cause whatsoever for the executing Court to dismiss the execution petition. All the more so, when the attachment was continued for three more months to enable the decree-holder to file a fresh execution petition. The executing Court could as well have exercised its discretion under Order 21 Rule 69 Sub-rule (1) CPC and adjourned the sale.

It is no doubt within the 'discretion' of the executing Court to exercise or not to exercise its power under Order 21 Rule 69 (1) CPC but such exercise of discretion one way or the other must undoubtedly be judicious. The order under revision, as already stated *supra*, is bereft of reasons and on facts, this Court finds no ground for the executing Court to dismiss the execution petition. This was therefore a fit case for the executing Court to exercise its discretion under the aforesaid statutory provision and adjourn the sale.

The order under revision is accordingly set aside to that extent and E.P.No.118 of 2016 is restored to the file of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar. As the earlier proclamation of sale was long ago, the executing Court would necessarily have to take recourse to Order 21 Rule 69(2) CPC and make a fresh proclamation and thereafter proceed in the matter.

The Civil Revision Petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

10th MARCH, 2017

PGS