

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2615 of 2012

ORDER

This revision under Section 115 of CPC is filed challenging the order dated 16.04.2010 passed in E.A.No.41 of 2009 in O.E.P.No.36 of 2005 in O.S.No.80 of 1997 by the Senior Civil Judge, Madanapalle, directing the judgment-debtor, petitioner herein, to deposit poundage amount of Rs.1,46,145/- along with simple interest at the rate of 6% per annum from the date of the order.

2. The first respondent herein is the auction purchaser. He purchased the property and deposited the amount together with necessary charges for issue of sale certificate. Later, it came to light that there was irregularity and illegality in conducting auction. Hence, he filed an application under Order XXI Rule 93 of CPC to set aside the sale conducted on 28.11.2007, and accordingly, the petition was ordered and the sale was set aside. Later, the first respondent-auction purchaser filed a petition under Rule 281 of Civil Rules of Practice read with Order XXI Rule 93 of CPC for refund of the poundage amount of Rs.1,46,145/- with interest at 18% per annum and for costs of Rs.10,000/-. The trial Court passed the impugned order directing the judgment-debtor, petitioner herein, to deposit the said amount. Aggrieved by the same, the present revision is filed.

3. The counsel for petitioner/judgment-debtor mainly contended that as per Rule 281 of Civil Rules of Practice and the Circular Orders of A.P. High Court, the Court has to determine the party, who is responsible for the irregularity or illegality in conducting auction

while setting aside the sale under Order XXI Rule 93 of CPC and fasten the liability to such person.

4. Whereas, the counsel for the first respondent supported the order impugned.

5. It is an undisputed fact that the property was brought to sale and sold in the open auction and later, it was set aside on the application by the first respondent-auction purchaser. Thereafter, the amount deposited with the Court was ordered to be repaid to the auction purchaser. Accordingly, the amount was paid while retaining the poundage amount of Rs.1,46,145/- i.e., expenses for conducting auction, and the auction purchaser applied for issuance of cheque under Rule 281 of Civil Rules of Practice, for the said amount. Thereupon, the executing Court directed the petitioner/judgment-debtor to pay the said amount. At this stage, it is relevant to extract Rule 281 Clause (2) of Civil Rules of Practice, as under:

“If the sale is set aside under Order XXI Rule 90 of the Code, the court shall determine whether any and what party is responsible therefor and may order such party to pay the costs and expenses of the sale, and may make an order any other party entitled to have the property sold may have the conduct of the sale and may make an order for the re-sale of the property”.

6. The order impugned is silent as to the party, who is responsible for such irregularity or illegality, and certainly, the judgment-debtor or the auction purchaser is not responsible for such irregularity or illegality. At best, the decree-holder will be the person responsible for such irregularity or illegality. Therefore, the decree-holder, whose instance the property was brought to sale, alone shall

be liable to pay the poundage amount though the sale is set aside at the instance of the auction purchaser, but not at the instance of the petitioner/judgment-debtor. The executing Court did not exercise its jurisdiction properly by applying its mind to Rule 281 of Civil Rules of Practice and Circular Orders of A.P. High Court and committed error in passing the order under Order XXI Rule 93 of CPC read with Section 281 of Civil Rules of Practice. Therefore, the order impugned is hereby set aside, while remanding the matter to the executing Court to decide the party, who is responsible for such irregularity or illegality in conducting the auction, and direct such party to deposit the poundage amount i.e., cost of auction, together with interest thereon, after affording opportunity to both parties, within one month from the date of receipt of a copy of this order.

7. With the above direction, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

15th March, 2018

sj